(28,036)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 679.

AMERICAN BANK & TRUST COMPANY ET AL., APPELLANTS,

vs.

FEDERAL RESERVE BANK OF ATLANTA, GA., ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., January 31, 1921.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Monday, the fourth day of October, A. D. 1920, at Atlanta, Georgia, before the Honorable Richard W. Walker and the Honorable Nathan P. Bryan, Circuit Judges, and the Honorable William I. Grubb, District Judge.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

versus

FEDERAL RESERVE BANK OF ATLANTA, GA. et al., Appellees.

Be it remembered, that heretofore, to-wit on the 2nd day of June, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Northern District of Georgia, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3552, as follows, to-wit:

1 TRANSCRIPT OF THE RECORD FROM SUPERIOR COURT OF FULTON COUNTY, GA.

In the District Court of the United States for the Northern District of Georgia, Northern Division.

AMERICAN BANK & TRUST CO., ET AL.,

versus No. 138 In Equity.

FEDERAL RESERVE BANK OF ATLANTA, GA., ET AL.

Georgia,
Fulton County.
To the Superior Court of Said County:

PETITION.

Plaintiffs hereinafter named bring this petition against the defendants hereinafter named and allege the following facts:

1. The plantiffs herein are the American Bank & Trust Company of Cordele, Crisp County, Georgia, The Pitts Banking Co., of Pitts, Ga., Bank of Sale City, Sale City, Ga., Bartow Bank of Bartow, Jefferson County, Georgia, The Farmers Bank of Abbeville Ga., Union Banking Co., of Alamo, Ga., Bank of Newton County, of Covington, Newton County, Citizens Bank of Helena, Ga., Bank of Collins at Collins, Georgia, Bank of Manchester of Manches-

ter, Meriwether Co., Ga., Farmers & Merchants Bank of Lumber City, Ga., Farmers & Merchants Bank of Jackson, Butts County, Georgia, and The Farmers Bank of Jenkinsburg and the Exchange Bank of Cordele, Georgia, who bring this suit in their own right and as representatives of a class hereinafter called "Country Bankers" who may be in like situation with the plaintiffs and make themselves party plaintiffs herein, as provided by law.

Each of the plaintiffs above named is a banking corporation created and existing under the laws of the State of Georgia.

2. The Defendants are: The Federal Reserve Bank of Atlanta, Georgia, a corporation, created and existing under the laws of the United States and being The Federal Reserve Bank for the Sixth District of the Federal Reserve System of the United States, the principal office of which bank is in the City of Atlanta, and said County, and the following natural persons in their individual capacity, who occupy the following official positions in said bank, to-wit: M. R. Wellborn, Governor of said Bank, L. C. Adelson, Deputy Governor of said Bank, M. W. Bell, Cashier of said Bank and Joseph A. McCord, Chairman of the Board of Directors of said Bank. Each of said individual defendants is a resident of said County of Fulton.

3. It has long been the policy of the State of Georgia as disclosed in its Constitution and laws, to foster, promote, regulate and encourage State banking institutions like those of the Plaintiffs' and to this end various and sundry statutes providing for the creation and regulation of said banks have been from time to time, enacted by the State of Georgia. The importance of such institutions in the economic development of the business of the State became so great that the Constitution of the State was

amended in the due course during the year 1918 so as to authorize the creation of a separate and distinct department in the government of said State, known as the "Department of Banking of the State of Georgia." Pursuant to said constitutional authority, the Legislature of Georgia, at its 1919 Session enacted a complete redraft of the banking laws of said State and provided for the creation of the Department of Banking of the State of Georgia and for the incorporation of banks and their regulations, as will fully appear from said Acts of Legislature—August 16th, 1919. Your petitioners, plaintiffs herein, were prior to said enactment subject to the regulatory powers of the State of Georgia and since said enactment subject in all respects to the provisions of the law creating said Department of Banking. There are more than six hundred other banking institutions in the State of Georgia likewise subject to said departmental control and more than five hundred of said banking institutions are located in the smaller towns outside of the centers of population and for the purpose of this petition are designated "Country Banks."

4. The State of Georgia is essentially an agricultural state. The great bulk of its population reside outside of its larger cities and said Country Banks have grown up in response to the demand for banking facilities by the rural population and agricultural interests
3 of the State. In order to provide for the organization of small banking institutions of this character, adjusted in size to the needs of the immediate community, the laws of said State authorize the organization of such a banking institution with a minimum paid in capital stock of Fifteen Thousand Dollars. Such small banking institutions are enabled with such small capital to meet the requirements of their immediate communities and earn a fair return upon the capital invested, not-

withstanding the small volume of their business, which would be wholly impossible if their capital requirements were larger and the consequent overhead expense and taxation added, creating a disproportion between the fixed charge and the volume of the business possible to such an institution located in a small community.

5. The economic development of such outlying communities through the instrumentality of banking facilities demands the location of such institutions in close proximity to the patrons they serve. The volume of such business is relatively small. The character of security for the loans of such institutions such as livestock, farm implements, growing crops, etc., is such as to require intimate personal knowledge by the officials of such institutions in determining on such loans and close supervision in the manner of their collection and enforcement of such security. These facts explain the existence of the large number of such institutions in the State of Georgia, the majority of which operate on relatively small capital and successfully conduct their business although it is relatively small in volume as to each institution. The aggregate of such business is large however and its beneficial effect on the economic development of the State is reflected in the large reduction of interest rates to the agricultural populations of the State which have resulted in recent years and in the fact that the State of Georgia compares favorably with any State in the Union in its increase of wealth per capita and general business and agricultural prosperity [prosperity].

6. Petitioners are informed that the aggregate capital of the six hundred and odd banks of Georgia is in round numbers $20,000,000.00 and the aggregate deposits in said institutions is at the present time estimated to be about

4 $150,000,000.00. The average capital of said banks thus appears to be about $33,000.00 each and all of said institutions, petitioners are informed and believes, are in a prosperous condition.

7. One of the fundamental and important functions performed by the Commercial Banks is the use of checks payable on demand, drawn against deposits in said banks, which are used in commercial transactions in lieu of actual money. Petitioners are informed that the best estimates on the subject place the performance of checks as a medium of exchange, as compared with the use of actual currency, as twenty to one. Through this instrumentality the medium of exchange is thus increased twenty fold.

8. The bank check is the instrument by which customarily a depositor seeks to withdraw his funds, or any part thereof from the bank. It is a draft or order on the bank requiring it to pay a sum named. The initial and primary obligation of the bank upon which a check is drawn is to pay the same over its counter in current funds on demand charging the amount of the same against the deposit account of the drawer of said check.

9. A custom has grown up in the banking business however, whereby a great majority of checks thus drawn against accounts are handled through banking channels in such a manner as that they reach the several banks upon which they are drawn through the mails by correspondence between the banks handling such checks. When checks are thus sent through the mails, a service is demanded of the bank upon which they are drawn in excess of the mere payment of such check; some of the elements of which may be thus enumerated;

A record must be made showing from whom said check was received and the amount thereof entered up in such

record. The party transmitting said check not being a resident of the same place in which the drawee bank is located expects a remittance of the proceeds of said check in funds available at the place of the senders residence or else in New York exchange, which by natural custom has grown to be current throughout the country. It thus becomes incumbent on the drawee bank to maintain at different financial centers, funds which may be drawn upon to cover remittances necessary to cover proceeds of checks thus sent to it through the mails. These funds are maintained by such banks through the medium of deposits to its credit in banking institutions located in such financial centers, which deposit account must be maintained in amounts adequate to meet the average necessities of said drawee bank. To maintain these balances against which such remittance drafts are drawn, the drawee bank must transmit funds from time to time to such depositors and pay the cost of such transmission. In addition to this, the drafts covering the proceeds of the check must be written up by competent clerical force and duly recorded on the records of said bank and properly charged to the account of such correspondent. And when the transaction is completed of record in the drawee bank, letters of remittance must be prepared by competent clerical force and postage paid for the return of such remittance to the correspondent through the mails.

10. The service thus rendered in the drawee bank to handle checks drawn upon it and sent through the mails, as above described, necessarily increases its expenses of doing business. This service inures directly to the benefit of the payee or original recipient of said check and subsequent holder thereof by indorsement in regular course of business and is the primary means through which checks have come to be so large an element in the media

of exchange in lieu of actual currency. In order to compensate for this service it has long been the universal custom of banks except in the matter of checks drawn between large financial centers to make a charge of a fraction of a per cent of the amount of such checks, which is deducted from the proceeds thereof and is commonly called "exchange". The word "exchange" as here used should not be confounded with the meaning of the word as applied to drafts on funds in financial centers commonly called "exchange". The word "exchange" as applied to the charge for the service rendered in remitting checks through the mails means compensation for such service. It is entirely proper that the expense involved in handling checks through mails and correspondent banks should be borne by the payees or indorsers of said checks (who receive the proceeds thereof) for the reason that said checks are issued in payment for merchan-
6 dise or in settlement of other business transactions in which such payees enjoy the profits involved in their particular business and the compensation for the service rendered by the banks is a small but appropriate expense of doing such business and should be borne by the party receiving the profits thereon.

11. Your petitioners are informed and so allege upon information and belief that the aggregate value of such service rendered by the Country Bankers in the State of Georgia would reach the total of a million dollars per annum.

12. Petitioners are informed and so allege upon information and belief that the Atlanta Clearing House, which is an association of the largest banks in the city of Atlanta, the capital of the State, and the largest association of the kind in the State, charge $1.11 per thousand dollars for such service in connection with checks

handled through said Association and your petitioners charge that said amount is substantially the correct estimate of the cost of said service.

13. The customary charge of the Country Banks for said service is on the average of about one-eighth of one per cent on the amount involved, which covers the actual cost of the service rendered and about twelve and one-half percent profit thereon.

14. Your petitioners charge that compensation for said service constitutes one of the most important sources of revenue of the Country Banks and the continuation of the right to make such charge is essentially important to their continued prosperity and to performance of their functions under the policy of the State of Georgia, under which they are regulated, and to the performance of their functions in the general growth and prosperity of the rural communities of the State.

15. In addition to the economic value of the service thus rendered and the enlargement of the use of such checks in the business of the Country through correspondents, as above explained the great hazards of handling so large a volume of transactions by the use of currency are avoided.

Opportunities for theft and defalcation are reduced to a minimum and the expenses of transmission of actual currency, burglary insurance and the proper care and safe-guarding of money are brought down to the lowest level.

7 16. When a bank forgoes any charge for the collection and remittance service, hereinbefore described, and forwards drafts to cover the amount of any such check so sent through the mails without any deduc-

tion for said service, the banking term employed in such a case is called "Remitting at Par."

17. In a published statement from said defendant Wellborn it is claimed by him that of the 30260 banks in the U. S. 26315 are now remitting at par for checks sent through the mails, of this number more than 7500 are national banks who are compulsory members of the Federal Reserve System hereinafter described and have no discretion in the premises. The others have submitted to this plan either through becoming members or by reason of the coercive measures to enforce submission hereinafter described. In view of the large number of State banks which have thus apparently surrendered at discretion to the demands of these powerful financial institutions, said Defendant Wellborn no doubt felt justified in predicting that the necessity to employ coercive measures in the Sixth Federal Reserve District would be obviated. Unless protected by the Courts the Country Banks in Georgia, will be driven either to submit or go out of business for the reasons herein stated. Hence that protection of the Courts is now and hereby invoked.

18. The Supreme Court of the U. S. decided the case of McCulloch vs. Maryland, 4th Wheaton, 316, that implicit in the provisions of the Federal Constitution was included power in Congress to establish banks as a part of the fiscal machinery of the general government. Following the financial exigencies incident to the Civil War, the Congress created a system of national banks nominally for the purpose of providing a national currency secured by United States bonds and incidentally to provide a market for the sale of bonds necessary to be floated by the Government following the Civil War. Under the original National Banking Act and the amendments thereto, an immense system of National Banks has grown up and

is at the present time made up of more than seventy-five hundred banks of the Union. These banks being creatures of Congress are of course subject to its control
8 and regulation.

19. The United States National Bank Currency, thus provided for and bottomed upon government bonds to be purchased and pledged by the National Banks to secure the same proved so inelastic in time of financial stress that financial panics resulted with more or less frequency and in order to remedy this evil the Congress of the United States in 1913 enacted a law known as the Federal Reserve Act, which was designed to furnish an elastic currency to afford means of rediscounting commercial paper and to establish a more effective supervision of banking in the United States.

20. Under this act the territory of the United States was divided into twelve districts and provisions was made for the creation of a Federal Reserve Bank for each of said Districts, the defendant bank herein being the Federal Reserve Bank under said Act for the Sixth District of the United States. A Federal Reserve Bank organized under said act is a corporate body made up of member banks, who are subscribers to and owners of capital stock of such reserved bank, the stockholdings of each member bank being apportioned in accordance with its individual capital and surplus.

21. All national banks are required to become members of the Federal Reserve Bank in the District in which such national bank is located.

22. The act also makes provision for the voluntary acquisition of membership in said Federal Reserve Banks by banks incorporated by special laws of the States, such

for instance as the plaintiffs in this case; provided, however, that such State institutions shall have the minimum capital stock required of national banks; viz: $25,000.00 in a town or city of not over 3,000; not less than $50,000.00 in a town or city between 3,000 and 6,000 population; not less than $100,000.00 in a town or city between 6,000 and 50,000 population; and $200,000.00, a minimum capital in cities with more than 50,000 population.

In addition to the capital requirements above provided for, state institutions becoming members of a Reserve Bank are required to conform to those provisions of law imposed on National Banks prohibiting loans on their own stock or relating to withdrawal or impairment of capital and to the payment of unearned dividends and
9 such institutions are subjected to the penalties of the criminal provisions of the National Banking Act and are required to make reports of their condition to the Federal Reserve Bank of which they become members.

23. As a condition of membership, such a state institution is likewise subject to examination by the examiners approved by the Federal Reserve Board. Such State institutions are also required to subscribe to the capital stock of the Federal Reserve Bank on the same basis as National Banks are required to do. In becoming a member of the Federal Reserve Bank a State Bank is subject to the same limitations as to discount and loans as apply to National Banks and as to certifying checks drawn by its depositors. Except as thus modified, a State institution joining a Federal Reserve Bank retains, its charter rights, under the State creating it. State institutions are also authorized to withdraw from the Federal Reserve Bank under conditions therein named.

24. The earnings of the Federal Reserve Banks, including the defendant Reserve Bank, after payment of

their expenses of operation are appropriated by said Act of Congress to the payment of six per cent dividend to their stockholders and the excess thereof to be divided one-half to the United States Government and the other half to the creation of the surplus until such surplus equals forty per cent of the capital of such reserve bank and thereafter all earnings, in excess of six per cent, to stockholders, are payable to the United States Government to be used in its Treasury for specific purposes enumerated in the Act.

25. Even upon liquidation of a Reserve Bank its assets over and above its liabilities to stockholders become the property of the United States and all property of such reserve banks is at all times exempted from all taxation.

26. Said Federal Reserve Act creates a Federal Reserve Board, which is given general supervision over all Federal Reserve Banks and their member banks, including the right to suspend reserve requirements to levy a tax on the amount by which such reserves are reduced when suspended or upon any deficiency of the reserve Federal Reserve notes; to supervise and regulate the issuing and retirement of Federal Reserve notes, to designate cities classified as "Reserve", and Centralized reserve Cities" to suspend any officer or director of any Federal Reserve Bank, to suspend the operation of any Federal Reserve Bank and take possession and administer its assets either for the purpose of liquidation or re-organization, to require bond of Federal Reserve agents, to grant special permits to National Banks to act as trustee, executor, administrator or registrar and, generally to exercise supervision over all Federal Reserve Banks.

27. Said Federal Reserve Act expressly recognizes the propriety of charging for the collection and remittances for checks through correspondents, as hereinbefore explained, but exempts all Federal Reserve Banks, including the defendant Reserve Bank from all such charges. Nothing in the Act is held to prohibit member banks from charging for extra expenses incurred in collecting or remitting funds or exchange to its patrons, subject to regulations by the Federal Reserve Board, which Board is required to make and promulgate from time to time regulations governing the transfer of funds and the charges therefor among the Federal Reserve Banks and their branches.

28. The scope of such regulations and fixation of charges for collection and remittances are limited by the Act to Federal Reserve Banks and their members.

29. Petitioners allege that under the provisions of said Federal Reserve Act it is an obvious conclusion that they were intended and designed by the Congress of the United States as improved machinery for the issuance and retirement of currency and the better regulation of the national banking system of the United States through a centralized governing body and thus improve the financial conditions necessary to the prosperity of the people of the United States and were not designed as money making institutions, nor for the purpose of increasing the revenues of the United States Government at the expense of the banking and business interests of the country at large. In order to carry out this purpose and to prevent excessive earnings of such institutions beyond their necessities for operating expenses and a six per cent dividend to their compulsory membership stockholders, the Federal Reserve Board is given full discretion to fix and vary from time to time the rates of interest and discount chargeable by said banks.

30. Your petitioners allege on information and belief and from observation of the experience of said
11 Federal Reserve Board since their organization on the 1st day of November, 1914, that the original design and purpose of said banks have been in a large measure perverted and their earnings capacity has proven to be so great that a rivalry has sprung up between the officials of the Federal Reserve Banks in the Twelve Districts of the United States to show large earnings on the business transacted by them.

31. In order to further increase the earning power of said Reserve Banks, which is necessarily at the expense of the member banks in such federated institutions, the said defendant Reserve Bank, acting under the policy announced by the Federal Reserve Board, has determined to use its immense financial power to compel the State Institutions in the Sixth Federal Reserve District, or as many as possible thereof, including your petitioners and all other banks in like situation to become members of said Federal Reserve Bank of said District. Some idea of the great financial power of defendant Reserve Bank may be obtained from the fact that, according to its statement of January 9, 1920, it held an amount of gold more than five times as much as the aggregate capital of all the country banks in Georgia.

The published statement of defendant Reserve Bank at close of business January 9, 1920, show a surplus of $4,695,000.00 on a capital of $3,429,400.00 or 136-9/10 per cent. A like percentage for all the twelve banks in the system at the same time was 137-3/10 per cent.

32. Your petitioners are informed and charge the fact to be that less than two per cent of the banking institutions created by the State of Georgia outside of its large cities have voluntarily exercised their right to become

members in said Federal Reserve Bank. A very large percentage of them are not qualified for such membership without increasing their capital stock to a point which would make it impossible under their volume of business to pay taxes and dividends on it.

33. Your petitioners allege on information and belief that the very small response to the invitation of the defendant Federal Reserve Bank to the institutions of this State to take out membership in it is a matter of disappointment to the officials of said banks who in their individual capacity are made parties defendant hereto. And petitioners allege on information and belief that said individual defendants have conspired and confederated together with the avowed purpose of using said immense financial power of the Federal Reserve Bank to compel the banking institutions of this State to take out membership in said Federal Reserve Bank and thereby for all practical purposes transfer their allegiance from the banking department of the State of Georgia, to the higher centralized autocratic organization of the general government for the control of Federal Banks and to compel this action, regardless of its ruinous effect either upon the earning capacity of your petitioners banks and other banks of like situation, or of their ability to discharge the useful functions in the development of their local communities which they have hitherto been able to discharge with such signal "success."

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34. Some time prior to December 23rd, 1919, the Federal Reserve Board at Washington was in receipt of a letter from some bank not a member of the Federal Reserve System protesting against the policy which had been adopted by the Federal Reserve Banks, with the approval of the Federal Reserve Board, in the matter of collection at par of checks received by the Federal Reserve Bank

either from their member banks or from non-member banks maintaining clearing or collection accounts with them.

25. In reply to said letter, the Federal Reserve Board wrote a letter defining its conception of the law and policy relative to the collection of bank checks and drafts at par. A copy of said letter from the Federal Reserve Board, in reply to said protest, is hereto attached and made a part of their petition and marked "Exhibit A" to which the usual leave of reference is prayed. After quoting and explaining their conception of the provisions of the Federal Reserve Act on the subject, the Federal Reserve Board announces in said letter the policy of ultimately establishing a universal or national system of clearing bank checks and drafts at par, and states that the one obstacle to the immediate inauguration of such a system is the ability of the small country banks to maintain balances with some city correspondent by means of which checks deposited with them will be handled at par and through which they can remit to cover checks drawn on them through the mails in exchange as hereinbefore fully explained.

13 36. It will be noted in said letter that the Federal Reserve Board is of the opinion that but for this facility of doing business with institutions of their own selection by petitioners, and other banks in like situation, there is no doubt that many more of such banks would avail themselves of the privilege tendered by the Federal Reserve Banks.

37. The Federal Reserve Board further make it clear that because the Federal Reserve Banks are exempted from all collection charges they cannot inaugurate a system of universal par clearance, where non-member banks

refuse to remit for their checks at par, and that therefore some other means of collecting such checks must be inaugurated no matter how expensive, claiming the right in a Federal Reserve Bank to incur unlimited expense in making such collections although it is prohibited from paying the nominal rate of exchange even at $1.00 per thousand.

38. Said policy thus promulgated by the Federal Reserve Board was on December 23, 1919, formally announced by the Federal Bank of Atlanta, named as defendant herein, purporting to act through its Governor—M. B. Wellborn; and in pursuance thereof the said defendant Wellborn, over his official signature, sent out to your petitioners, and petitioners are informed, to all other non-members state banks in Georgia a letter of which a copy is hereto attached and made a part of this petition marked "Exhibit B."

39. Exhibit A was enclosed under the same cover with Exhibit B and the map referred to in Exhibit B was also enclosed and the same will be to the Court shows, but it is of such character that it is not practicable to exhibit it to this petition and make it a part of the record. Said map discloses by a variety of colors that the States of Wisconsin, Minnesota, the two Dakotas, Arkansas, West Virginia and the eight South Atlantic and Gulf States east of Texas are the only States in the Union whose banks have stood out against the effort of the Federal Reserve Bank to centralize the business of the State Banks at Washington and to compel them to abdicate for all practical purposes their local functions and allegiance to the states that created them.

14 40. While Exhibit B contains a polite invitation to petitioners and other banks in like condi-

tion to voluntary relinquish their sources of revenue in compensation for services rendered as hereinbefore explained and remit at par for all checks sent them through the mails, it nevertheless contains without any effort at concealment the plain threat that if this invitation is not accepted defendant would be forced to adopt other methods of collection that would prove embarassing, annoying and expensive to petitioners and other banks in like condition. Said letter recognizes the burdens imposed by consenting to remit at par and as a sop to serberus offers to absorb the postage and expense charges but leaving all other expense, clerical and otherwise, to be borne by petitioners and other banks in like condition without compensation unless petitioners choose to charge said expense to their local customers and depositor instead of having it paid, as now, by the dealers, manufacturers and merchants, who reap the profits from the transactions covered by said checks.

The depositors of petitioners and other country banks should not have this burden transferred to them because they enjoy the privilege of being credited at par in their deposit accounts all checks deposited by them and are supplied with exchange free of charge. To charge depositors at the rate of $1.11 per thousand for handling their checks through the mail, which is the established cost of such service, would be prohibitory, while distributing it to the payees of said checks puts a burden on nobody and facilitates the operation of small country banks by providing revenue to cover the cost of postage and clerical help necessary to handle checks through the mails as herein elsewhere explained.

41. The offer contained in said letter—Exhibit B, to allow petitioners and other banks in like situation to open a non-member clearing account with defendant Reserve Bank is a studied effort to take away from the cor-

respondent banks in the large cities in Georgia with who, petitioner and other banks in like condition have dealt for years, their deposit accounts and centralize them in the Federal Reserve Bank. If this scheme succeeds, the large city banks in Georgia will see their deposit
15 accounts shrink like the far famed cat fish. This proposed clearing account would necessitate the maintenance of a large increase of the reserve now carried by petitioners and other banks in like condition because the deposit item thereunder would be carried by defendant Reserve Bank in suspense of "Uncollected Fund Account", as it is called, until actually paid, whereas, under the present system obtaining between petitioners and their correspondents immediate credit subject to checks is entered on receipt of such items.

42. Petitioners are informed and believe and so charge that said items in transit technically called the "Float" are carried in suspense by the defendant Reserve Bank from date of receipt until the actual return of proceeds into the Federal Reserve Bank. The consequence is that petitioners would frequently appear to be overdrawn in such an account, although large credit balances would appear but for the suspense items afloat. Such a condition does not arise under petitioners present method with their correspondents. Frequently the incoming checks technically called the "daily letters" are equaled or exceeded by items received through petitioners deposit windows and the remittance draft covering the former is provided for by the immediate credit of the latter, both being carried to destination by the same mail. Thus the slack in reserve is always taken up; while under defendants proposed clearing account it might easily happen that the float in suspense would equal the entire assets of a country bank and render it unable to meet its daily obligations.

43. Petitioners deny the jurisdiction of the defendant Reserve Bank in its coperate capacity and of each individual defendants under the cover of their official connection with it, over any bank created by the sovereign State of Georgia, which has not voluntarily submitted to said jurisdiction, and less than one in fifty of such state banks outside of the large cities in the State have seen fit to take that step. There is very little inducement to join it by a bank with any choice in view of the policy of its management which has transformed it into a money making institution, entered into compensation with its members on whose capital it operates. Petition-
16 ers are informed and charge the fact to be that it handles direct drafts with bills of lading attached and demands checks from drawees certified by their individual banks to pay for same, and required its members to carry all reserve with it, thereby depriving them of all interest on balances. As a result of these practices petitioners are informed and charge the fact to be that defendant Reserve Bank made over 100% on the capital furnished by its members during the year 1919 and its statement shows average earnings of about 33-1/3% per annum since its organization clear of all expenses of its operation (the amount of which expense does not appear in its statements", of which earnings only 6% per annum is distributed to its members who furnish the capital. Regardless of the construction or interpretation of the Federal Reserve Act, petitioners are advised by counsel and therefore allege that Congress has no power even by a direct, explicit and mandatory enactment to coerce them or other state banks in like conditions against their will to submit to the jurisdiction of defendant reserve bank, either as members or non-members banks. There is no warrant in law for perverting the Federal Reserve Act into an instrument of autocratic tyranny to compel petitioners and other banks created by the State of Georgia to sacrifice their

charter rights and legitimate revenues to fatten the surplus profits already piling up in the Federal Reserve Bank, which at present are about one and three-eighths times as great as their aggregate capital stock.

44. Nevertheless petitioners allege that said individual defendants under the cloak of their official connection with the defendant Reserve Bank threaten and intend to use the great resources of said Reserve Bank to compel petitioners and other banks in like condition to either join said Federal Reserve Bank, or else have their business so interfered with and their revenues so depleted by the embarrassing, annoying and expensive methods now in preparation for exploit upon them as to drive them out of business altogether. Petitioners have hereinbefore fully shown how and why a small country bank in a "sparsely" settled and remote agricultural section of the state cannot meet the requirements necessary to membership in the Federal Reserve Bank, nor can they deplete their revenues by remitting at par and continue the successful prosecution of their small, but useful and necessary business functions in their respective communities.

17 45. Whether or not defendant Reserve Bank will accept checks at par drawn on banks not holding membership in it is optional with it and not mandatory. The said bank has been in operation more than five years, and not until recently has it undertaken to handle checks on non-members at par, unless the drawee bank was located at a financial center of such size as to make it what is known as a "Par Point."

46. Petitioners are informed and believe and so charge that one of the embarrassing, annoying and expensive expedients to which the defendants intend to resort is to accumulate checks drawn on petitioners or other banks in

like condition in the State of Georgia until the aggregate thereof is a large amount and then sending a special messenger to the counter of the bank on which said checks are drawn and demand payment thereof in currency over the counter. Such a course would inevitably drive a small country bank out of business. Without notice as to when such checks will be presented, or as to the amount thereof, it would be necessary for such bank to carry an amount of money in its vault large enough to meet any emergency of this kind and would destroy its capacity to lend out said funds in regular course of business and therefore cause the loss of the interest revenue now derived from such loans, in addition to this, the appearance in a small village, or town, of a stranger and unknown person in an automobile, or other conveyance, and his subsequent withdrawal under the eyes of the attendant and curious crowd of country people of large sums of currency from the local bank the same to be carried away in the presence, perhaps of many of the depositors of said bank, is calculated to, and in all probability would result in an immediate run on said bank that would promptly put it out of business. The reputation of a bank is exceedingly sensitive, and any criticism or suspicion of it, whether well or ill-founded, speedily enlarges into distrust, condemnation and ruin.

47. Petitioners allege that such method is useless, tyrannical ultra vires the charter of said defendant Reserve Bank and the threat to employ such a method petitioners allege to be a perversion, if not a prostitution of the functions of such a great institution. When such methods are employed for the purpose of coercing and op-
18 pressing petitioners and other banks in like condition created by the State of Georgia, it amounts to an outrageous invasion of the rights of your petitioners

granted to them under the charter of the great State of Georgia.

48. Nevertheless, the individual defendants freely admit that this method has been employed in other states to force unwilling state banks into line and in view of their letter of December 23 petitioners charge that they expect to use this method on petitioners and other banks in like condition in Georgia, unless restrained from doing so by the strong arm of a Court of Equity.

49: Another embarrassing, annoying and expensive method, which petitioners are informed and allege on information and belief that defendants expect to employ, as stated in said letter, is to hire a special agent in each town where petitioners, or other State banks in a like town do business, and mail checks on such local banks to said agent with instructions that he present same at the counter of the bank upon which same is drawn and demand payment in currency. Since this currency would necessarily have to be transmitted back to the defendant Reserve Bank and the cost thereof paid by it, petitioners charge that such a method is employed for an ulterior purpose, rather than in good faith for the good faith for the purpose of collecting said checks, and petitioners allege on information and belief and from the facts hereinbefore set forth, that said ulterior purpose is to coerce petitioner and other banks in like condition to bow to the will of defendants in the matter of remitting at par to cover their daily letters and ultimately to coerce petitioners and other banks in like situation to either join said Federal Reserve Bank or maintain a clearing deposit account with said bank, as hereinbefore fully explained. The evils of such a method of collecting checks differ only in degree from those set forth in a preceding paragraph where said collection is made by a special messenger in automobiles,

or other conveyances. The effect upon the constant maintenance of cash in vault to meet liabilities and the consequent material depletion of the reserve of petitioners in financial centers would be the same.

19 50. Another embarrassing, annoying and expensive method which petitioners are informed and allege on information and belief that the defendants expect to employ in their effort to coerce submission of petitioners, and other banks in like condition, to submit to the jurisdiction of said Federal Reserve Bank, is the transmission of said checks to the local postmaster, or through the express companies, for collection in currency over the counters of the bank on which they are drawn. Since the rates for such collections by express or post-office remittance are equal to or greater than the rate of exchange now charged on remittances to cover such checks, the employment of such a method, petitioners allege to be in bad faith. The evils of having checks thus presented and paid in currency would be as great under this method as under either of the others, and would materially interfere with the successful prosecution of the legitimate business of petitioners and other banks in like conditions, which they are now expressly authorized to do under their several charters from the State of Georgia.

51. There may be other methods of oppression in preparation by defendants, designed to force submission of petitioners and other State Banks of like condition to their will, of which petitioners are not informed, but petitioners allege that any method which disrupts the orderly course of business involved in the collection of checks through the mails would necessarily be ruinous to the business of petitioners and other banks in like condition if persisted in and would result in either the submission of the petitioners or the abandonment of their

business altogether under their state charters. In addition to this, the economic results of such method of doing business would be a tremendous injury to all the business interest in the State, including the business of petitioners and other banks in like situation. It is well known and the Court will no doubt take judicial cognizance of the fact that the relation of actual currency to bank transactions in the country as a whole is about one to twenty and any scheme which interferes with the orderly and continued course of such dealings clogs the channels of commerce, increasing the risks of doing business by handling large amounts of currency and added expense of insurance against burglary, theft and defalcation, to say nothing of the loss of revenue caused by the disturbance of the ordinary reserves now necessary to meet the requirements of the law regulating State Banks and the necessities of the business of the Banks themselves.

52. Petitioners alleges that the adoption of any of the methods hereinbefore described, or any like methods for the purpose of coercing petitioners, or other banks in like situation, to relinquish the revenue accruing to them by exchange on remittance, would operate to deprive petitioners and other banks in like condition of their property without due process of law in violation of that clause of the Fifth Amendment of the Constitution of the United States, which provided that no person shall be deprived of life, liberty or property without due process of law.

53. Petitioners allege that relatively speaking the service of these small country banks to their respective communities is as necessary and important to those communities as are the service of larger institutions in populous cities including the Federal Reserve System itself and the public Policy of the State of Georgia as found in

its Constitution and laws encourage the creation and activities of said small country banks. On [of] the 792 banks in the State of Georgia, petitioners are informed and believe that 610 are chartered by the State of Georgia, the others being National Banks. Of the 610 State Banks, petitioners are informed 510 are located outside of the large cities of the State and come within the classification of country banks. Of the 510 country banks, petitioners are informed that 224 have a capital stock of $20,000.00 or less and not one of these banks could meet the conditions necessary to membership to the Federal Reserve Bank without the increase of its capital stock to a point beyond which it could earn taxes and dividends thereon and such increase would in many cases be impossible as the additional stock could not be sold. On the other hand, petitioners are informed and believe and so allege that none of said small banks could successfully continue in business without the benefit of the compensation for their services for remittances covering checks as hereinbefore explained. Consequently, if the coercive schemes
21 of the defendant are permitted to fructify, these small but useful and necessary state institutions will necessarily be driven out of business and the public policy, to say nothing of the local self-government, of the great State of Georgia, will be outraged and overridden by the autocratic tyranny proposed to be exercised by the defendants hereto, operating in the name but outside the power of the defendant Reserve Bank created by Congress for a purpose entirely foreign to any such objects and purposes.

54. Upon the receipt by petitioners and other banks in like situation in Georgia of said letter—Exhibit B and its enclosures, all the recipitents declined to accede to the demand of defendants to remit at par and a Committee was appointed to confer with the defendants on behalf

of petitioners and other banks in like situation in an effort to accommodate the situation and persuade the defendants to recede from their effort to compel compliance with their demands. This committee conferred with the individual defendants herein named on more than one occasion and was informed on each occasion that the defendants intended to insist upon remitting at par or else would employ methods to compel such course on the part of petitioners or other banks in like situation, and stated that they were preparing their plans of action and would put them in operation as soon as they were completed.

55. Petitioners are informed and believe and so charge that said individual defendants are now actively engaged in the preparation and perfection of plans which will put in operation said measures hereinbefore described or else other measures of like import with the avowed object of compelling petitioners and other banks in like situation to accede to said demands. Said defendant—Bell, Cashier of the defendant Reserve Bank delivered an address as petitioners are informed, before the Rotary Club of Atlanta on the 5th day of January, 1920, in which he said "that the charging of exchange on checks and other instruments sent to various banks for collection is a vice which should be eradicated." And the said Bell in cooperation with the other individual defendants named is preparing measures to compel petitioners and
22 other banks in like situation to forego said charge for exchange and the individual defendants advise petitioners and the Committee of Country Bankers representing petitioners and other banks in like situation that as soon as said plans are ready for operation they will be put into effect.

56. Petitioners allege that said efforts to coerce petitioners and other banks in like situation through the in-

strumentality of said defendant Reserve Bank are illegal, oppressive and unwarranted by the charter powers and functions of said bank and that the efforts of said individual defendants in that direction are chargeable to them as individuals and constitute an invasion of petitioners rights and the rights of other banks in like situation for the reasons hereinbefore fully stated. And it is necessary for the protection of said rights that said defendants Reserve Bank in its corporate capacity, and said individual defendants in their individual capacities should be restrained by the orders of this Court from further prosecution of their plans to forcibly and illegally coerce petitioners and other banks in like situation to accede to their demands or else suffer serious embarrassment, annoyance and expense in the conduct of their business.

57. In case said coercive measures are employed, or any of them, the injury and damage to your petitioners and other banks would be irreparable and incapable of ascertaining in money and petitioners and other banks in like situation will be wholly remediless unless a Court of equity will intervene for their protection.

Wherefore, the premises considered and being with out remedy at law, petitioners present this petition in their own behalf and in the behalf of other banks in like condition and invoke the aid of a Court of Equity in which alone they can find adequate relief since the damages they would sustain by the alleged conduct of the defendant if wholly incapable of ascertainment and thereupon respectfully prays:

1. That the defendants herein be served with the process of this Court as is usual in such cases.

2. That injunction both interlocutory and permanent be granted against said defendants and each of them, their

officers, agents, attorneys, messengers, or other
23 media of action preventing them from using, inaugurating or attempting to use, inaugurate or adopt any method of collecting checks drawn against petitioners or either of them that would prove embarrassing, annoying and expensive to petitioners.

3. That injunction both interlocutory and permanent do issue against defendants and each of them, as aforesaid, enjoining them from collecting or attempting to collect any check against petitioners or against any other bank in like condition who may become a party hereto except in the usual and ordinary channel of collecting checks through correspondent banks or clearing houses, said channels being well established and well understood by defendants and all others familiar with the banking business.

4. That pending the hearing on said prayer for injunction, this Honorable Court may grant a restraining order as usual in such cases restraining the defendants and each of them, their agents and servants, from adopting or attempting to adopt any method of collection of checks drawn against these petitioners, or against any bank in like condition who may become a party hereto, in any manner that would prove embarrassing, annoying and expensive to the bank upon which said check is drawn, or in any manner other than the ordinary channels and processes for collection of checks now in force and well understood in banking circles.

5. Petitioners further pray that the injunction and restraining order hereinbefore prayed for may be so worded as to prevent the defendants or either of them from in any manner interfering with petitioners or any other bank who may become a party hereto, from charging the

usual and customary rate of exchange for compensation of service rendered in remitting for checks sent through the mail.

6. That petitioners may have such other and further relief in the premises as may be meet and proper.

And petitioners will ever pray;

GREEN F. JOHNSON,
& SMITH, HAMMOND & SMITH,
Petitioner's Attorneys.

ALEX W. SMITH,
of Counsel.

24 EXHIBIT A TO PETITION.

Receipt is acknowledged of your letter in which you protest against the policy which has been adopted by the Federal Reserve Banks with the approval of the Federal Reserve Board in the matter of the collection of checks which have been received by the Federal Reserve Banks from their member banks or from non-member banks which maintain clearing or collection accounts with them.

The Boards action is based upon its conception of the very evident purposes of the Federal Reserve Act, Section 13 of the Act begins as follows: "Any Federal Reserve Bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal Reserve note or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and Bills, "Even though the Federal Reserve Board has heretofore ruled that the permissive "May" as used in the foregoing paragraph should not be construed to mean the mandatory "shall" nevertheless it is clear that a Federal Reserve Bank in

order to do any business whatever must exercise some of the permissive powers authorized by law. It would be impossible otherwise for a Federal Reserve Bank to afford to its member banks many of the privileges which the law clearly contemplates and to which the member banks are clearly entitled. But independently of a discussion of this phrase of the situation, it seems to the Board that doubts upon this question are resolved upon a consideration of the provisions of Section 16; "Every Federal Reserve Bank shall receive on deposit at par from member banks or from Federal Reserve Banks checks and drafts drawn upon any of its depositors." In this case, the obligatory "shall" is used so that there is no option in the Federal Reserve Bank so far as checks and drafts upon its depositors are concerned. From this it may be argued that as the depositors of a Federal Reserve Bank are member banks there is no obligation upon the Federal Reserve Bank to receive on deposits at par checks on non-member banks, but even if the language of Section 13 be construed as permissive there seems to be no question that
23 the Federal Reserve Bank has the right to receive on deposit from any of its member banks any checks or drafts upon whomsoever drawn, provided they are payable upon presentation. The whole purpose of the Act demands that in justice to member banks, they should exercise that right. Section 16 further provides that the Federal Reserve Board "may at its discretion exercise the functions of a clearing house for such Federal Reserve Bank and may also require each such bank to exercise the functions of a clearing house for its member banks." In accordance with the purpose of this paragraph, the Federal Reserve Board, with the view ultimately of establishing a universal or national system of clearing intersectional balances as well as bank checks and drafts, has established a gold settlement fund through which daily clearings between all Federal Reserve Banks

are consumated and has also required each Federal Reserve Bank to exercise the Functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve Bank should not only exercise its obligatory power to receive from member banks checks and drafts upon other member banks but that it should also exercise its permissive powers to receive from member banks any other checks and drafts upon whomsoever drawn, provided they are payable upon presentation.

There are no doubt many non-member banks without sufficient capitalization to make them eligible for membership in the Federal Reserve System, but provision is made for such banks in section 13 by authorizing the Federal Reserve Banks for the purposes of exchange or collection, to receive deposits from any non-member bank or trust company. But for the fact that small country banks are able to have their out of town items credited at par by some city correspondent, there is no doubt that many more of them would avail themselves of the non-member collection privelege than have done so.

There is a proviso in Section 13 which allows
26 member and non-member bank to make reasonable charges, "to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against Federal Reserve Banks." This has been construed by the Attorney General of the United States as meaning that a Federal Reserve Bank cannot legally pay any fee to

a member or non-member bank for the collection and remittance of a check. It follows, therefore, that if the Federal Reserve Banks are to give service required of them under the provisions of Section 13 they must in cases where banks refuse to remit for their checks at par use some other means of collection no matter how expensive.

The action of the various Federal Reserve Banks in extending their par lists has met with the cordial approval of the Federal Reserve Board, which holds the view that under the terms of existing law, the Federal Reserve Banks must use every effort to collect all bank checks received from member banks at par. Several of the Federal Reserve Banks are now able to collect on all points in their respective districts at par and new additions to the other par lists are being made every day. The Board sees no objection to one bank charging another bank or firm or individual the full amount provided in Section 13 of the Federal Reserve Act (10 cents per $100) and has not undertaken to modify these charges, but the Act expressly provided that no such charge shall be made against the Federal Reserve Banks.

It is the Board's duty to see that the law is administered fairly and without discrimination and that it applies to all banks alike and it is making an earnest endeavor to carry out the laws as construed by the highest legal authorities of the administrative branch of the Government.

Yours very truly,

W. P. G. HARDING,
Governor.

27 EXHIBIT B. TO PETITION.

Federal Reserve Bank of Atlanta.

December 23rd, 1919

M. B. Wellborn, Governor.
L. C. Adelson, Deputy Governor.
M. W. Bell, Cashier.
W. P. Roper, Ass't Cashier.
R. A. Sims, Ass't Cashier.
J. L. Campbell, Ass't Cashier.
H. F. Conniff, Ass't Cashier.
J. M. Slattery, Secretary.
Jos. A. McCord, Chairman of the Board and Federal Reserve Agent.
Edw. T. Brown, Deputy Chairman.
Ward Alberton, Ass't Federal Reserve Agent.
Creed Taylor, General Auditor.

As you know the Federal Reserve Bank of Atlanta, and its branches have not been handling checks and drafts drawn upon your bank. This was not meant as a reflection, but was due to the fact that you have not signified your willingness to remit at par for your checks, and under the provisions of the Federal Reserve Act as contrued by the Attorney General of the United States, we are not permitted to pay exchange charges for the collection of bank checks drafts payable upon presentation.

However the time has now arrived, when, in justice to the 8,955 member banks of the Federal Reserve System, and the non-member banks who maintain clearing accounts with the various Federal Reserve Bank together with the 16,196 non-member banks who are remitting at par we must, in compliance with the intent of the Federal Reserve Act begin receiving on deposit, at par, checks and drafts payable on presentation drawn on any bank in the United

States whether a member of the Federal Reserve System or not. This will include the checks and drafts drawn upon your bank, and the purpose of this letter is to ask you that you join the vast army for par remittance banks by advising us it will be agreeable, for us to include your name in the next issue of our par list, and that you will remit to us at par for items drawn upon you, while, as stated, the Federal Reserve Act does not permit us to pay exchange for the remittance for bank checks and drafts payable upon presentation, we can incur any cost that is necessary in order to carry out the purposes of the Act, and we would very much regret to be forced to adopt other methods of collection that would prove embarrassing, annoying and expensive to you.

28

In order that you may incur expense in remitting to us at par for items drawn upon you, we will.—

1. Enclose with each cash letter a stamped envelope for the return remittance.

2. Permit you to send us currency, at our expense, in payment of our letters, if you prefer to remit in that form instead of exchange; such currency, if gold, silver, minor coin of $1 and $2 bill. Bills to be sent us by express, charges collect bills of larger denominations than $2 to be sent us by registered mail, insured, you to deduct the cost of postage and registration, and insure the shipment under our policy, we furnishing you the necessary declaration forms.

3. Permit you to open with us a non-member clearing account, and sent to us for credit, at par, items drawn on any of the 25,151 banks in the United States shown in our par list, which list we hope to announce in a short time covers the remaining 5,109 banks, that are not now remitting at par. The items so sent to us would be credited

by us to an uncollected funds accounts and be transferred when available in accordance with our time schedule, to collected funds account. The balances shown in the collected funds account would be available to you for use in paying for cash our letters sent you; our only requirement being that a sufficient balance be maintained in the collected funds account to off set the items that are in transit to you for remittance.

Any excess balances on the collected fund account would be subject to your check as you might desire, or we would make wire transfers for you, charging only the cost of telegrams, or ship you currency at your expense. As a matter of information would say that our own member banks, the cost of telegrams incident to wire transfers and shipments of currency are absorbed by us. So that you may visualize the progress that has been made in the establishment of a national par list we enclose a map of the United States from which you will note that 24 States and the District of Columbia are entirely par, and ten States are nearly par.

29 Also, in order that you may full understand the necessity for the efforts of the Federal Reserve Banks towards establishing a national par list, we enclose copy of a letter written to a non-member bank, which defines the questions of law and policy involved.

The fact remains that the Federal Reserve Act is a law passed by majorities in both Houses of Congress, and neither the Federal Reserve Board, nor the Federal Reserve Banks, can do other than follow the mandates thereof.

We wish to point out in this connection, that while we would expect you to remit at par for checks and drafts drawn upon you, you would still be in a position to charge exchange for the collection of bill of lading drafts, maturing notes and other purely collection items and it is

probable that the profits derived from the handling of these items represent the larger proportion of your exchange earnings.

Also your remitting to us at par would not prohibit you from charging your depositors at time of deposit, at the legal rate of interest to cover the time involved in the collection of out of town items.

We trust you will give the matter the earnest consideration it deserves, and will advise us that you will remit to us at par for checks and drafts drawn upon you.

Awaiting the favor of your reply, for which stamped envelope is enclosed we remain,

Yours very truly,

M. B. WELLBORN,
Governor.

Georgia,
Fulton County.

You J. W. Cannon do swear that you are President of the American Bank and Trust Company of Cordele, Crisp County, Georgia, named as one of the petitioners in the foregoing petition and that you have read said petition and are familiar with the allegations of fact therein contained and that said allegations of fact are true of your own knowledge excepted as stated on information and belief and as to such allegations you believe them to be true.

J. W. CANNON.

Sworn to and subscribed before me, this 14th day of January, 1920.

MRS. P. B. McCALL,
Notary Public, Fulton County, Georgia. (Seal N. P.)

TEMPORARY RESTRAINING ORDER.

American Bank & Trust Co.,

vs. In Fulton Superior Court.

Federal Reserve Bank of Atlanta, et al.

Order.

The original petition in said case has been presented to the Court and read and sanctioned by the undersigned Judge thereof. Let said petition be filed and served as usual including this order.

The defendants will show cause before the Judge of said Court sitting in Chambers on the 24th day of January 1920 at 9:30 o'clock A. M. or as soon as counsel can be heard why a temporary injunction should not issue as prayed.

In the mean time and until the hearing or further order of the Court the defendants and each of them, their agents and servants are restrained from employing and putting into execution any method of collecting checks drawn against petitioners or either of them, or against any other bank in like condition which is hereafter made a party plaintiff in this case, that would prove embarrassing, annoying or expensive to such banks; and from collecting such checks in any manner except in the usual and orderly way now employed among corresponding bank and clearing houses, and from interfering with any such bank in charging collecting or retaining the usual and customary rate of exchange charges now in effect between corresponding banks and clearing houses.

It is the sole and only object and purpose of this restraining order to preserve the existing status and method of collecting and remitting for checks through the mails by petitioners and other banks in like situation who may

become party plaintiff in this case, until the matter complained of in this petition may be heard by the Court in regular course.

This January 15, 1920.

W. D. ELLIS, Judge S. C. A. C.

31 State of Georgia,
County of Fulton.

American Bank & Trust Co., et al,
Complainant

versus

The Federal Reserve Bank of Atlanta Ga. M. B. Wellborn, L. C. Adelson, M. W. Bell, & Joseph A. McCord.
Complainant.

To the Sheriffs or His Deputy of said County, Greeting:

The defendants are hereby required, personally or by attorney to be and appear at the Superior Court, to be held in and for said County, on the first Monday in March, 1920, then and there to answer the Plaintiffs complaint, as in default thereof said Court will proceed, as to justice shall appertain.

Witness, the Honorable J. T. Pendleton, Judge of said Court, this 15th day of January, 1920.

T. C. MILLER, Deputy Clerk.

Georgia, Fulton County:

I have this day served the Defendant L. C. Adelson personally with a copy of the within petition and process. This Jan. 20, 1920.

LANE MITCHELL,
Deputy Sheriff.

Georgia, Fulton County:

I have this day served the Defendant M. B. Wellborn, personally with a copy of the within petition and process. This Jan. 20, 1920.

LANE MITCHELL,
Deputy Sheriff.

Georgia, Fulton County:

I have this day served the Defendant Joseph A. McCord personally with a copy of the within petition and process. This Jan. 20, 1920.

LANE MITCHELL,
Deputy Sheriff.

Georgia, Fulton County:

Served the defendant Federal Reserve Bank of Atlanta, Georgia, a corporration by serving J. M. Slattery Sec. by leaving a copy of the within writ and process with him at the office and place of doing business of said corporation, in Fulton Co., Ga. This Jany 20, 1920.

LANE MITCHELL,
Deputy Sheriff.

Georgia, Fulton County:

I have this day served the Defendant M. W. Bell, personally with a copy of the within writ and process in this County. This Jany 20, 1920.

LANE MITCHELL,
Deputy Sheriff.

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32 AMENDMENT TO ORIGINAL PETITION.

Filed in Office this the 15th day of Jany 1920.
T. C. MILLER, Deputy Clerk.

American Bank & Trust Co. et al.
vs. No. 44323
Fulton Superior Court.
The Federal Reserve Bank of Atlanta, et al.

Now comes the original plaintiffs in said case and amend their petition therein as follows:

Strike the words "Fifth Amendment of the Constitution of the United States" in Paragraph 52 of said petition and insert in lieu thereof the words "third paragraph of the bill of rights of the Constitution of the State of Georgia."

SMITH, HAMMOND & SMITH,
GREEN F. JOHNSON,
Plaintiffs' Attorneys.

Allowed this January 19th, 1920.
W. D. ELLIS, Judge S. C. A. C.

Filed in Office this the 19th day of January 1920.
W. C. KENDRICK, Deputy Clerk.

PLAINTIFF'S DEMURRER.

American Bank & Trust Company et al.
vs. No.44,323
Fulton Superior Court.
Federal Reserve Bank of Atlanta et al.

Now comes the plaintiffs in the above stated case and demur to the petition for the removal of said case to the United States District Court for the Northern District of Georgia, notice of filing of which has been served upon plaintiffs and move to strike the same as insufficient in law for the following reasons:

1. Because the allegations of said petition that said action arises under the Constitution and laws of the United States for the reason that the Federal Reserve Bank of Atlanta, one of the defendants, herein is a corporation organized in pursuance of and obedient to the Federal Reserve Act, expresses a mere conclusion of law which is unsupported by the statutes and laws of the
33 United States for that under the Act of Congress of July 12, 1882, Chapter 290 is provided:

"That the jurisdiction for suits hereafter brought by or against any association established under any law providing for the National Banking Associations shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States."

And under the judiciary Act of March 3, 1887, corrected by Act of Congress of August 13, 1888, Chapter 866, providing:

"That all National Banking Associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, common or mixed, or of suits in equity, be deemed citizens of the State in which they are respectively located, and in such cases the Circuit and District Courts (of the United States) shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State."

And under the terms and provisions of the Federal Reserve Act, the said defendant Reserve Bank of Atlanta is a National Banking Association, managed and controlled by its own officers, as a separate and distinct National Banking corporation.

2. Because said action appears from the allegations therein, is not a suit for the recovery of money and does not involve a controversy over property capable of valuation and it is impossible from the allegations of said petition to determine what, if any, amount of value is in controversy as to each of the plaintiffs in said case.

3. Because the allegations of said petition that the individual defendants therein are agents and officers of the United States, is a conclusion of law unsupported by the terms and provisions of the Federal Reserve Act under which said individuals are officers and agents of said National Banking Corporation alone appointed by it in its corporate capacity, compensated by it as a National Banking Corporation and do not hold their appointment as agents of the United States in any capacity, all of which appears as a matter of law from an inspection of the Act itself.

Of all of which plaintiffs pray judgment of the Court and that the prayer for said petition for removal of said cause be denied.

34 SMITH, HAMMOND & SMITH,
GREEN F. JOHNSON,
Petitioners Attys.

Filed in office this the 20th day of January, 1920.

W. C. KENDRICK, Deputy Clerk.

PETITION FOR REMOVAL.

In the Superior Court of Fulton County, Georgia:

American Bank & Trust Company, et al,

vs. No. 44,323.

Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson, Defendants.

Bill for Injunction and Equitable Relief, etc.,

To the Honorable, the Superior Court of Fulton County, Georgia.

Your petitioners, to-wit: Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell, and L. C. Adelson defendants in the above styled action, respectfully represent and show to this Honorable Court, as follows:

1. That this is a civil action brought in this Court by the plaintiffs above named against the defendants above named, your petitioners praying for injunction and other extraordinary relief.

2. That said action is in equity and is of a civil nature and arises under the Constitution and laws of the United States for the reason that the Federal Reserve Bank of Atlanta, one of the defendants herein, is a corporation organized in pursuance of and obedient to that certain Act of Congress, known as the Federal Reserve Act.

3. That the matter in controversy in said suit exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

4. The value of the alleged right of each of the plaintiffs sought respectively, to be protected in and by the bill filed herein exceeds the value of $3,000.00 exclusive of interest and costs.

5. The matter in controversy in said suit between each of the plaintiffs and the defendants exceeds exclusive of interest and costs the sum or value of $3,000.00.

6. The Federal Reserve Bank of Atlanta, one of the defendants has its office and principal place of business in the city of Atlanta, Fulton County, Georgia, and in the Northern District of Georgia, and is, as above
35 set out, a corporation under the laws of the United States, Joseph A. McCord another of the defendants, is a citizen and resident of the City of Atlanta, County of Fulton, and State of Georgia, and in the Northern District of Georgia. M. B. Wellborn, another of the defendants, is a citizen of the State of Alabama, and is now domiciled in the City of Atlanta, Fulton County, Georgia, and in the Northern District of Georgia. M. W. Bell, another of the defendants is a citizen and resident of Fulton County, Georgia, and in the Northern District of Georgia. L. C. Adelson, another of the defendants, is a citizen of the State of Alabama and is now domiciled in the City of Atlanta, and in the Northern District of Georgia. The Citizenship and residence of the parties was as above set out at the time of the commencement of said suit, and such residence and citizenship has been as above set out since the filing of said suit, and at the present time is as above set out.

7. The Federal Reserve Bank of Atlanta is an agency of the United States, and the other defendants are officers of said Bank and are agents and officers of the United States, administering their duties pursuant to the Feder-

al Reserve Act above referred to, and the rules and regulations of the Federal Reserve Board:

8. That no special bail was or is required in said action.

9. Your petitioners further show that this petition is made and filed before your petitioners are required by the laws of the State of Georgia, or the rules of this Honorable Court, to answer or plead to the complaint of plaintiffs, and that it is desired by your petitioners, the defendants herein, to remove said cause from this Honorable Court to the District Court of the United States, for the Northern District of Georgia, in accordance with the provisions of the Acts of Congress of the United States in that belief made and provided.

10. Your petitioners herewith present and file a good and sufficient bond as provided by the statutes in such case made and provided, in the penal sum of $1,000.00, that they will enter in such District Court for the Northern District of Georgia, within thirty days from the filing of this petition, a certified copy of the record in this suit and for the payment of all costs which may be awarded by the said Court, if the said District Court shall hold that this suit was wrongfully or improperly re-
36 moved thereto. Written notice of this petition and of said bond for removal have been given counsel for the plaintiffs prior to the presentation and filing of this petition.

Wherefore, your petitioners present this petition to the Court and pray that said bond may be accepted as good and sufficient and that this Honorable Court will make and enter into an order for the removal of this suit into the District Court of the United States for the Northern District of Georgia, in which District this suit is pending.

pursuant to the Acts of Congress in such cases made and provided, and this Court proceed no further therein, except to make the said order of removal, and that the Court direct a transcript of the record herein to be made for said Court as provided by law.

And as in duty bound, your petitioners will ever pray; etc.

HOLLIS N. RANDOLPH,
ROBERT S. PARKER,
Petitioners Attorneys.

State of Georgia,
Fulton County:

M. B. Wellborn, Joseph A. McCord, M. W. Bell, and L. C. Adelson being each duly sworn according to law, separately, deposes and says;

I am one of the petitioners in the above written petition and have read said petition, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and as to such statements I believe it to be true.

M. B. WELLBORN,
JOSEPH A. McCORD,
M. W. BELL,
L. C. ADELSON.

Subscribed to and sworn before me this 17th day of January, 1920.

S. F. PARHAM,
(Seal of N. P.) Notary Public, Fulton County, Ga.

State of Georgia,
Fulton County:

Before me, the undersigned Notary Public, in and for said County personally appeared M. B. Wellborn, who being duly sworn deposes and says that he is Governor of the Federal Reserve Bank of Atlanta, a corporation under the laws of the United States, and as such officer is authorized to make this affidavit for and on behalf of said bank. Deponent says that the said bank
37 is one of the petitioners in the above written petition and that he has read said petition and the same is true of his own knowledge, except such matters as are therein stated on information and belief, and as such statements he believes the same to be true.

M. B. WELLBORN.

Sworn to and subscribed before me this 17th day of January, 1920.

S. F. PARHAM,

(Seal of N. P.) Notary Public, Fulton County, Ga.

In the Superior Court of Fulton County, Georgia:

American Bank & Trust Company; The Bitts Banking Company; Bank of Sale City; Bartow Bank of Bartow; The Farmers Bank of Abbeville, Georgia; Union Banking Company of Alamo Georgia; Bank of Newton County; Citizens Bank of Helena Georgia; Bank of Collins; Bank of Manchester; Bank of Lumber City, Georgia; Farmers & Merchants Bank of Jackson; The Farmers Bank of Jenkinsburg, and the Exchange Bank of Cordele, Georgia.

Plaintiffs,

vs. No. 44,323.

Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph McCord, M. W. Bell and L. C. Adelson.

Defendants.

Bill for Injunction and Equitable Relief, etc.

To the Plaintiffs in the Case above Styled, or their Attorneys of Record Messrs, Smith, Hammond & Smith and Green F. Johnson.

Please take notice that the defendant will, on the 20th day of January 1920, at 9:00 o'clock A. M. or as soon thereafter as Counsel can be heard, move the Court for an order removing said case to the District Court of the United States for the Northern District of Georgia in accordance with petition and bond of defendants, copies of which are hereto attached.

This 17th day of January 1920.

HOLLIS N. RANDOLPH,
ROBERT S. PARKER,
Petitioner's Attorneys.

Service of the above and foregoing notice is hereby acknowledged Copy received All other and further service waived. This Jany 17th, 1920.

GREEN F. JOHNSON,
SMITH, HAMMOND & SMITH,
Attorneys for Plaintiffs.

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38 In the Superior Court of Fulton County, Georgia.

American Bank & Trust Company, The Pitts Banking Company, Bank of Sale City, Bartow Bank of Bartow, The Farmers Bank of Abbeville, Georgia, Union Banking Company of Alamo Georgia, Bank of Newton County, Citizens Bank of Helena Georgia, Bank of Collins, Bank of Manchester, Farmers & Merchants Bank of Lumber City Georgia, Farmers & Merchants Bank of Jackson, The Farmers Bank of Jenkinsburg and the Exchange Bank of Cordele Georgia,

Plaintiffs,

vs. No. 44,323

Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson,

Defendants.

BILL FOR INJUNCTION AND EQUITABLE RELIEF, ETC.

Know all men by these presents, That we, Federal Reserve Bank of Atlanta, a body corporate under the laws of the United States, having its office and principal place of business in Fulton County, Georgia, and M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson of Fulton County, Georgia, as principals and the United States

Fidelity and Guaranty Company, a body corporate under and by virtue of the laws of the State of Maryland, having its principal office and place of business in the City of Baltimore, Maryland, and authorized by its charter to enter into this undertaking, as surety are held and firmly bound unto;

American Bank & Trust Company of Cordele, Crisp County, Georgia, The Pitts Banking Company of Pitts, Georgia, Bank of Sale City, Sale City, Georgia; Bartow Bank of Bartow Jefferson County, Georgia, The Farmers Bank of Abbeville, Georgia; Union Banking Company of Alamo, Georgia; Bank of Newton County of Covington, Newton County, Citizens Bank of Helena, Georgia; Bank of Collins at Collins Georgia, Bank of Manchester, Meriwether County, Georgia, Farmers & Merchants Bank of Lumber City, Georgia, Farmers & Merchants Bank of Jackson, Butts County, Georgia, and the Farmers Bank of Jenkinsburg and the Exchange Bank of Cordele, Georgia, plaintiffs in the above entitled cause, their successors and assigns, and the sum of One thousand ($1,000.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made we, and each of
39 us bind ourselves and each of us our successors, heirs, executors and administrators, jointly and severally by these presents.

The condition of this obligation is such that:

Whereas, the said Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, H. W. Bell, and L. C. Adelson, have applied by petition to the Superior Court of the County of Fulton, State of Georgia, for the removal of a certain cause therein pending wherein the said American Bank & Trust Company of Cordele, Crisp County, Georgia, The Pitts Banking Company of Pitts Georgia; Bank of Sale City, Sale City, Georgia; Bartow Bank of

Bartow, Jefferson County, Georgia; The Farmers Bank of Abbeville, Georgia; Union Banking Company of Alamo Georgia; Bank of Newton County of Covington Newton County; Citizens Bank of Helena, Georgia; Bank of Collins Georgia; Bank of Manchester, Meriwether County, Georgia; Farmers & Merchants Bank of Lumber City, Georgia; Farmers & Merchants Bank of Jackson, Butts County, Georgia; Farmers Bank of Jenkinsburg and the Exchange Bank of Cordele, Georgia, are plaintiffs, and the said Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell, and L. C. Adelson are defendants, to the District Court of the United States for the Northern District of Georgia, for further proceedings on grounds in said petition set forth, praying in said petition that all further proceedings in said action in said Superior Court of Fulton County, Georgia, be stayed.

Now, therefore, if said petitioners, to-wit: Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson shall enter into said District Court of the United States for the Northern District of Georgia aforesaid, within thirty days from the date of filing of said petition a certified copy of the record in such suit and shall pay or cause to be paid all costs that may be awarded therein by said District Court of the United States, is if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise , shall remain in full force and effect.

Witness the hands and seals of all undersigned parties hereunto affixed, this 20th day of January, 1920.

FEDERAL RESERVE BANK OF ATLANTA,
By M. W. BELL, Cashier.

M. B. WELLBORN,
JOSEPH A. McCORD,
M. W. BELL,
L. C. ADELSON,
As Principals.
(Seal of Federal Reserve Bank).

UNITED STATES FIDELITY & GUARANTY COMPANY,
By FRANK H. REYNOLDS,
(Seal) Gen'l Agent.
As Surety. (Seal of U. S. Fidelity and Guaranty Co.)

Executed in the presence of S. F. PARHAM, Notary Public, Fulton Co., Georgia. (Seal of N. P.)

In the Superior Court of Fulton County, Georgia:

American Bank & Trust Company et al

vs. No. 44,323

Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson.
Defendants.

Bill for Injunction and Equitable Relief, etc.

Order of Superior Court of Fulton County removing above Styled cause to the United States District Court for the Northern District of Georgia, and Approval of Bond.

This cause coming on for hearing upon petition and bond of the defendants herein for an order transferring this cause to the United States District Court for the Northern District of Georgia and it appearing to the Court that the defendants have filed their petition for such removal in due form of law, and that the defendants have filed their bond duly conditioned, with good and sufficient sureties, as provided by law, and that defendants have given plaintiffs due and legal notice thereof, and it appearing to the Court that this is a proper cause for removal to said District Court, after argument had on both sides.

Now, therefore, said petition and bond are hereby accepted and it is hereby ordered and adjudged that this cause be and it is hereby removed to the United States District Court for the Northern District of Georgia, and the Clerk of this Court is hereby directed to make up the record in said cause for transmission to said Court forthwith.

41 Done in open Court, this 5th day of February 1920.

W. D. ELLIS,
Judge Superior Court Atlanta, Circuit.

Filed in Office this the 20th day of January, 1920.
W. C. KENDRICK, Deputy Clerk.

AMENDMENT OF DEFENDANT'S PETITION AND ORDER THEREON.

In the Superior Court of Fulton County, Georgia:

American Bank & Trust Company et al.
Plaintiffs,
vs. No. 44,323

Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell, and L. C. Adelson
Defendant.

Bill for Injunction and Equitable Relief, etc.

Come now the Federal Reserve Bank of Atlanta, a corporation organized under the laws of the United States M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson, defendants in the cause above styled and by leave of the Court first had and obtained, amend their petition heretofore filed praying for removal of this cause from this Honorable Court to the District Court of the United States for the Northern District of Georgia, and for grounds of amendment says:

1. This cause arises under the Constitution and laws of the United States.

2. This cause arises under the laws of the United States because the same involves a determination of the construction, application and effect of that certain Act of Congress known as the Federal Reserve Act, and amendments thereto.

3. This cause arises under the laws of the United States because in and by the plaintiff's bill filed herein the said Plaintiff's seeks to enjoin the Federal Reserve Bank of Atlanta and the other defendants from exercising powers conferred under Federal law, to-wit: that Act of Congress, with the amendments thereto, known as the Federal Reserve Act.

4. The said bill of plaintiff's presents a Federal question in that the same avers that the defendants are performing the acts complained of and sought in said bill to be restraining, under the direction of the Federal Re-
42 serve Board, organized and created under the said Federal Reserve Act, and that the conduct of said defendants so complained of is upon a claim of rights and powers conferred under and by virtue of said Federal Reserve Act. Said bill denies the said powers and rights and thus presents a Federal question, in that it undertakes to set up and declare a right to restrain the exercise of the powers claimed by the defendants to arise under said Federal Reserve Act.

5. Said bill presents a Federal question because it appears from plaintiff's petition that in order to maintain the same that certain Act of Congress, with amendments thereto, known as the Federal Reserve Act must be construed to the end that it may be ascertained from such con-

struction the extent to which said Act as amended, confers authority upon the said Federal Reserve Bank of Atlanta and its officers and, also, upon the Federal Reserve Board, to do and perform the acts sought in said bill of injunction to be restrained.

HOLLIS N. RANDOLPH,
ROBERT S. PARKER,
Defendants Attorneys.

Read and considered. Let the above amendment be filed subject to demurrer, this 31st day of January, 1920.

W. D. ELLIS,
Judge Superior Court Atlanta Circuit.

State of Georgia,
County of Fulton:

M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson, being each duly sworn according to law, separately depose and say:

I am one of the petitioners in the petition for removal heretofore filed in the within styled cause. I have read over the within and foregoing amendment to said petition for removal and the same is true to my own knowledge, except such matters as are therein stated on information and belief, and as to such statements I believe it to be true.

M. B. WELLBORN,
JOSEPH A. McCORD,
M. W. BELL,
L. C. ADELSON.

43 Subscribed to and sworn before me this 30th day of January, 1920.

H. E. DUNLAP,
(Seal of N. P.) Notary Public, Fulton Co., Ga.

State of Georgia,
County of Fulton:

Before me, the undersigned Notary Public in and for said County, personally appeared M. B. Wellborn, who being duly sworn deposes and says that he is Governor of the Federal Reserve Bank of Atlanta, a corporation under the laws of the United States, and as such officer, is authorized to make this affidavit for and on behalf of said Bank. Deponent says that said Bank is one of the petitioners to the petition for removal heretofore filed in the within styled cause, and that he has read the within and foregoing amendment to said petition, and that the same is true to his own knowledge, except such matters as are therein stated on information and belief, and as to such amendments, he believes it to be true.

M. B. WELLBORN.

Subscribed to and sworn before me this 30th day of January 1920.

H. E. DUNLAP,
(Seal of N. P.) Notary Public, Fulton Co., Ga.

Filed in Office this 31st day of January, 1920.
W. C. KENDRICK, Deputy Clerk.

American Bank & Trust Co., et al
vs. No. 44,323.
Fulton Superior Court.
Federal Reserve Bank of Atlanta, et al.

Demurrer of Plaintiffs on petition for Removal to the District Court of the United States for the Northern District of Georgia.

The defendants in the above stated case having amended the petition for removal to the United States Court for

the United States Court for the Northern District of Georgia, the plaintiffs come now and renew their demurrer heretofore filed to the original petition for removal therein and say that said petition for removal as amended is insufficient in law for the reasons stated in their original demurrer and for the following reasons, to-wit:

44

1. The allegations of the petition for removal and in said amendment to said petition for removal expresses a mere conclusion of law unsupported by the allegations in plaintiffs original bill from which alone the Court can ascertain whether or not the cause of action set forth in said original bill arises under the Constitution and laws of the United States.

Demurrants insist that the cause of action set forth in said original bill arises and exists independently of the Constitution and laws of the United States and springs from the rights vested in the plaintiffs under the common law and statutes of the State of Georgia under which the plaintiff banking corporation were created. If the construction of the Federal Reserve Act is involved in connection with said cause of action such construction will be invoked if at all by the defendants in support of some defense they may interpose in said cause. If such construction is invoked and should prove adverse to the contentions of the plaintiffs in said cause, their right of action instead of arising out of such construction would be defeated thereby while such a construction may involve ultimately, a Federal question in said case, it is not such a Federal question arising under the Constitution and laws of the United States as would confer jurisdiction on the District Court of the United States for the Northern District of Georgia, either on original bill or by removal, but might authorize a writ of error from the adverse

judgment of the Court of last resort in the State of Georgia to the Supreme Court of the United States.

2. For further grounds of demurrer, demurrants insist that under the allegations of the original bill in said cause, the District Court of the United States for the Northern District of Georgia would not have jurisdiction of the cause of action therein set up had said bill been filed originally in said District Court of the United States for the Northern District of Georgia.

43 Wherefore, demurrants insist that said District Court of the United States would be without jurisdiction of such cause or the removal thereof.

Of all of which these demurrants pray judgment to the Court.

GREEN F. JOHNSON,
SMITH, HAMMOND & SMITH.
Attorneys for demurrants and
Original Plaintiffs in said case.

ALEX W. SMITH, of Counsel.

Filed in office this the 31st day of January, 1920.
W. C. KENDRICK, Deputy Clerk.

State of Georgia,
County of Fulton:

I, Arnold Broyles, Clerk of the Superior Court of Fulton County, Georgia, do hereby certify that the within and foregoing is a true and correct copy of the record in the case of American Bank & Trust Co., et al, versus Federal Reserve Bank of Atlanta, Ga., et al., as appears of the file and record in this office.

Witness my hand and the seal of office this the 14th day of February, 1920.

ARNOLD BROYLES,
(Seal) Clerk Superior Court, Fulton County, Georgia.

United States District Court, Northern District of Georgia.

Filed in office this 19th day of February, 1920.

No. 138 In Equity.

O. C. FULLER, Clerk.

(Interventions making additional Banks Parties Plaintiff Omitted)

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46 DISQUALIFICATION OF HON. SAMUEL H. SIBLEY TO HEAR CASE.

In the District Court of the United States for the Northern District of Georgia.

American Bank & Trust Company, et al.
vs. In Equity No. 138
The Federal Reserve Bank of Atlanta, et al.

Removed from Fulton Superior Court.

In the above stated case I am disqualified by reason of interests to preside. It is ordered that this fact be entered of record and that an authenticated copy hereof shall be forthwith certified to the Senior Circuit Judge for the Fifth Circuit, that such proceeding may be had as is specified in Section 14 of the Judicial Code.

This February 23rd, 1920.
SAM'L H. SIBLEY,
U. S. District Judge.

Filed in Clerk's Office Feby 23rd A. D. 1920.
O. C. FULLER, Clerk.
By JON DEAN STEWARD,
Deputy Clerk.

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47 ORDER DESIGNATING HON. BEVERLY D. EVANS, UNITED STATES JUDGE, TO HOLD DISTRICT COURT FOR NORTHERN DISTRICT OF GEORGIA.

United States of America, Fifth Judicial Circuit.

Whereas the Honorable Samuel H. Sibley, Judge of the District Court of the United States for the Northern District of Georgia, pursuant to the provision of Section 20 of the Judicial Code, has recused himself in the matter of the American Bank & Trust Co., et al, vs. The Federal Reserve Bank of Atlanta, et al, No. 138 in Equity, pending in the Northern District of Georgia, and the same has been certified to the undersigned as Senior Circuit Judge now present in said Circuit:—

Now, therefore, considering Sections 20 and 14 of the Judicial Code, I, Richard W. Walker, Senior Circuit Judge, do hereby designate and appoint the Honorable Beverly D. Evans, Judge of the District Court of the United States for the Southern District of Georgia, to hold the District Court of the United States for the Northern District of Georgia, and particularly to try and dispose of the above mentioned application, and therein to have all the powers vested in the Judge of said District, pursuant to Section 14 of the Judicial Code.

Witness my hand, this 25th day of February, 1920.
R. W. WALKER,
United States Circuit Judge.
U. S. District Court.

Received Clerk's Office and filed Feb. 28, 1920.
O. C. FULLER, Clerk.

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48 AMENDMENT TO ORIGINAL BILL.

In the District Court of the United States, for the Northern District of Georgia.

American Bank & Trust Company et al,
vs. In Equity No. 14.
The Federal Reserve Bank et al.

Without waiving the questions of jurisdiction raised by the Plaintiffs in said case by their motion to remand the same to the Superior Court of Fulton County, Georgia, Plaintiffs ask leave to amend their original bill therein for the benefit of themselves and the class they represent, as follows, to-wit:

1. Section 13 provides that the reasonable charges to be made by the member and non-member banks shall be "determined and regulated by the Federal Reserve Board". By clear mandate of Congress, therefore it is made the duty of the Federal Reserve Board to determine and regulate such reasonable charges for the collection and remission of proceeds of checks and drafts.

2. The proviso that "no such charges shall be made against the Federal Reserve Banks" can have no appli-

cation to checks held by the Reserve Banks for collection. Since the act of the agent is the act of the principal, the charge against the agent for the service rendered at the request of the agent for the benefit of the principal is a charge against the principal and not the agent.

3. Plaintiffs further allege that Section 13 authorizing and making it the duty of the Board to determine and regulate reasonable charges to be made by member and non-member banks, refers only to checks presented by the Federal Reserve Banks to members or to non-members which carry a balance with the Federal Reserve Bank, and not to checks presented directly to members or non-
49 members through outside channels. This for the reason that the provision as to reasonable charges is enacted as a proviso to the first paragraph of Section 13 which refers only to checks received by the Federal Reserve Banks and not to checks received and presented through other channels. As to this latter, the common law right of the payor to make a reasonable charge for the service of remitting has not been regulated or limited in any way by the Federal Reserve Act if such a limitation could be constitutionally made.

4. If it be contended that Section 16 requires the Federal Reserve Bank to account for such checks at par, and that this would prohibit it from charging back to the owner the payor's reasonable charge for remitting the proceeds, the answer is that the amendment of Section 13, being later in point of time, would govern, and anything in conflict therewith would be impliedly repealed.

5. Plaintiffs further allege that there is no necessity for the Federal Reserve Bank to inaugurate any harsh and illegal methods of collecting checks on non-member banks. Its clearing house functions can be, and are being,

exercised in a simple and practical way and entirely within the terms and provisions of the Federal Reserve Act.

6. Section 16 of said Act provides that member banks or non-member clearing depositors may charge their patrons for this service and requires them in turn to pay their Federal Reserve Bank or their fellow member bank, designated to perform such clearing house functions, the cost of collecting and clearing their checks. The Federal Reserve Board has so construed the law in paragraph 10, Regulation J. which is in the following language:

"The cost of collecting and clearing checks must necessarily be borne by the banks receiving the benefit and in proportion to the service rendered. An accurate account will be kept by each reserve bank of the cost of performing this service and the Federal Reserve Board will, by rule, fix the charge at so much per item, which may be imposed for the service of clearing or collection rendered by the reserve banks, as provided in section 16 of the Federal Reserve Act."

50 7. Plaintiffs allege on information and belief that the defendant, the Federal Reserve Bank, is actually sending out checks on non-member banks and authorizing collection charges to be deducted therefrom as is apparent from the following documents, to-wit:—

(a). On or about February 10, 1920, the Jacksonville Branch of defendant, Reserve Bank, transmitted to the Hawthorne State Bank, of Hawthorne, Florida, six checks aggregating $138.27 and requested draft to cover, "giving us the best rate you can, if you feel you cannot remit at par". Signed W. G. Wilson, Cashier.

(b). Said Hawthorne Bank remitted to cover said checks as requested and charged 1/8 of one per cent ex-

change, the draft remittance being dated February 12, 1920, to order of "Federal Reserve Bank" for $137.92, on the Atlantic National Bank of Jacksonville, Florida, signed by W. C. Mahin, Cashier of said Hawthorne Bank. Said draft was indorsed by an eliptical rubber stamp containing the words and figures: Jacksonville Branch Federal Reserve Bank of Atlanta, paid February 13, 1920, No. 19" and perforated with the words "Paid 2/13/20."

(c). On February 13, 1920, said Jacksonville Branch of defendant, Federal Reserve Bank, transmitted to the Commercial Bank of Jasper, Florida, sixteen checks or cash items aggregating $895.35, and requested draft to cover, "giving us the best rate you can, if you feel you cannot remit at par". Signed W. G. Wilson, Cashier.

(d). Said Commercial Bank of Jasper, Florida, returned one of said items amounting to $15.00 and remitted to cover the remaining checks and cash items as requested and charged $1.10 exchange on the aggregate thereof, to-
wit, $880.35, same being 1/8 of one per cent there-
51 of, the remittance draft being dated February 14, 1920, to order of Federal Reserve Bank, for $879.25, on Barnett National Bank, Jacksonville, Florida, and signed Hilda Register, Assistant Cashier of said Commercial Bank of Jasper, Florida, and said draft was paid February 16, 1920, bearing the indorsement of said Jacksonville Branch of the defendant, Reserve Bank, as described in sub-paragraph (b) above.

(e). Through like documents said Commercial Bank of Jasper, Florida, received and remitted for checks and cash items to said Jacksonville Branch on February 13, 1920, aggregating $845.51, less $1.05 exchange covered by draft to order of Federal Reserve Bank for $844.46, and indorsed and stamped paid on February 16, 1920.

(f). Through like documents items aggregating $543.58 were remitted for by the High Springs Bank of High Springs, Florida, to said Jacksonville Branch of defendant, Reserve Bank, less 1/10 of 1% exchange, on February 11, 1920.

(g). Through like documents items aggregating $1294.12 on February 16, 1920, and $347.60 on February 18, 1920, were remitted for by the State Exchange Bank of Lake City, Florida, to said Jacksonville Branch of defendant, Reserve Bank, less 1/10 of 1% exchange.

The original documents referred to will be to the Court shown.

52 8. Plaintiffs must assume that the defendant, Reserve Bank, is not conducting this business in violation of the second proviso to Section 13 of the Federal Reserve Act, as amended, which prohibits it from paying any such charge; and therefore Plaintiffs charge that while deduction of collection charges is thus allowed by defendant, Reserve Bank, as between it and the remitting bank, these charges are either prepaid or repaid to it by the bank for whose account the checks are cleared, and that the member bank has in turn deducted these charges from the amounts credited or paid to its patrons who indorsed such checks over to it.

9. From the facts aforesaid Plaintiffs charge that the coercive measures, now threatened are not only not authorized or required by the terms of the Federal Reserve Act, which includes the charter of defendant, Reserve Bank, but express provision is found therein for the performance of all clearing house functions, therein imposed, in the regular way and through orderly banking channels applicable to non-member banks as well as member banks.

Wherefore, plaintiffs charge that the threatened coercive measures are ultra vires the charter of the defendant, Reserve Bank, and the execution thereof by the individual defendants, would be illegal, and should be enjoined.

10. Plaintiffs further allege on information and belief that the following coercive measures have been actually employed by Federal Reserve Banks in other Federal Reserve Districts, and since all the Reserve Banks are under the control of the Federal Reserve Board, plaintiffs have reason to fear that unless enjoined by the Courts, methods of like embarrassing, annoying and expensive kind will be employed against them by the individual defendants in this case claiming to act under the charter power of the defendant, Reserve Bank.

(a). Wood Cones, President of Cones State Bank, of Pierce, Nebraska, was solicited in September,
53 1919, to have said Bank join the Federal Reserve Bank at Kansas City, Missouri, same being the Reserve Bank for the District in which said Cones Bank is located. Upon refusing to join the system said Cones was requested to place his said bank on the par list. Refusing that, said Cones was informed by an agent of the Omaha branch of said Federal Reserve Bank of Kansas City that his bank would be compelled to remit at par at an early date. During the next few weeks checks on said Cones Bank were presented at the counter for payment through the Express Company and an agent of said Omaha branch of said Kansas City Federal Reserve Bank, and by one expedient or another induced to accept exchange drafts therefor. Later on, November 14, 1919, a high powered automobile containing four people, drove into Pierce and stopped in front of said Cones Bank, but the engine was kept running. Two men, W. S. Lower and M. L. Bishop, got out of the car armed with revolvers and entered said Cones Bank. As agent of said Federal

Reserve Bank, they demanded the currency on checks drawn against the Cones State Bank of Pierce, Nebraska, of the aggvegate face value of $31,900.00, some of which had been held for over three weeks. While one of said Cones Bank force was counting out the money (about $13,000.00 more than said Cones Bank was legally required to carry in its vault under the law of Nebraska) Mr. Lower told Cones that Bishop was a United States Marshal, hard boiled and armed, that he had cleaned up the State of Kansas and would get said Cones Bank, so it had better sign up the agreement and keep its money. This was refused.

Late in December an agent of the Kansas City Reserve Bank repaired to Pierce, Nebraska, under instructions to stay there till said Cones State Bank agreed to remit at par, in the meantime collecting all checks sent from said Federal Reserve Bank or its branches over the Counter of said Cones State Bank in cash, and attempting to organize a National Bank in opposition to said Cones State Bank and other State Banks doing business in Pierce, Nebraska, and fomenting dissatisfaction with the customers of said State Banks by charging that
54 said State Banks were robbing their depositors of ten cents on every hundred dollars deposited with them. Said agents boasted that they were spending the Government's money "like drunken sailors" and would not stop at any expense to force said State Bank to join the Federal Reserve System.

(b). A Country Bank in Indiana informs plaintiffs that it has had as much trouble with the Federal Reserve Bank of Chicago as the Cones State Bank had in Nebraska with the Federal Reserve Bank of Kansas City except that as yet no National Bank was being organized to put the State Bank out of business. This bank forbids plaintiffs to disclose its identity for the reason "that we do

not want to be persecuted any longer by the Seventh Federal Reserve Bank".

(c). A Country Bank in Wisconsin informs plaintiffs that the Federal Reserve Bank of Minneapolis has notified it that "other than regular methods of collection" will begin on March 15, 1920, and the State Bank adds "just what the outcome will be I cannot foretell, but we shall do the best we can to combat that form of hold-up, the same as any other attempted robbery or burglary."

This bank also forbids plaintiffs to disclose its identity, saying:—"We are in an ideal position for the strong-arm methods of the Federal Reserve Bank to be used against us, being a long distance from help in case of need."

Plaintiffs charge a combined and concerted movement of all the Federal Reserve Banks, including defendant Reserve Bank, to injure and damage Plaintiffs and other Country Banks throughout the United States by depriving them of the valuable property right to charge for their services in transmitting funds through "financial violence, fear, intimidation and oppression, as in this bill fully set forth.

55 11. Petitioners further allege that the present policy of coercion and attempted monopoly of the business of the State Banking systems is due to the subversion of the design of the Federal Reserve Act to localize the several Reserve Banks in such manner as to adjust them to the needs and customs of the several sections embraced in the several Reserve Districts. Nothing in the Federal Reserve Act is more obvious than the honest efforts of Congress to prevent the evils of centralization. The Central Bank at Washington was eliminated for no other purpose. The classification of the directorate of the Reserve Banks was designed to neutralize this ten-

dency, and make each Reserve Bank responsive to the requirements of each element represented. The Advisory Council was created with the same object in view. All these checks on the evils of the autocratic use of power, seem to be rapidly losing their capacity to grapple with the evil, and are becoming, if they have not already become, spineless and impotent. The Reserve Board, whether rightly or wrongly, is, in fact, at the throttle of all the combined power of the twelve Reserve Banks and they appear to be controlled and directed by this board, with the result that we have greater centralization at Washington than would have resulted from a single Central Bank. This was never contemplated in the Federal Reserve Act.

In support of this allegation Plaintiffs allege that a Director of the Federal Reserve Bank of Dallas, Texas, resigned from the Board of that Bank on October 17, 1919, on the ground that the policy and practices of the Bank were dictated from Washington and he was unwilling to give them the implied sanction that would be inferred from his remaining on the Board. A full copy of the resignation of said Director is hereto attached and marked Exhibit "A", to which the usual leave of reference is prayed.

12. Plaintiffs further allege that by universal
51 custom and practice in the banking business, there is an implied contract between the bank and its depositors that, so long as a bank is solvent and open for business under the regulation and permission of the governmental authorities to which it is accountable, funds will be drawn out against said deposits only in regular course of business, and through usual and customary channels. Deposits are made and received with this understanding, and the basis of all the laws, rules and regulations as to amounts required to be kept in reserve and

"in vault" rests upon this understanding. The transferee of a check is chargeable in law with the obligations resting upon the drawer in this respect and a wilful violation of this implied contract, that tends to demolish the entire irreparable loss and damage, will be enjoined by a Court of Equity.

SMITH HAMMOND & SMITH,
Pltffs. Sols.
ALEX W. SMITH,
of Counsel.

57 "EXHIBIT A".

October 17, 1919.

Hon. Chairman and Board of Directors,
Federal Reserve Bank, Dallas, Texas.

Gentlemen:

Entertaining as I do a deep sense of appreciation of the honor conferred upon me in selecting me as one of the Directors of the Houston Branch, I regret very much that circumstances beyond your control and mine have arisen that compel me to relinquish the honor.

The policy recently adopted by the Federal Reserve Board under which coercive measures are being pursued to compel small country banks, who are not members of the Federal Reserve System and not even eligible to such membership, to surrender what I conceive to be a legitimate source of profit, is in my judgment wholly unwarranted by the language of the Federal Reserve Act, by the intent of its framers or by any existing circumstances or conditions.

So far as I know, in all times and in all countries since the beginning of the banking business, exchange has been

considered a legitimate source of profit to those engaged in that business and certainly it has always been so considered in this country until the advent of the present regime.

However the transaction may be disguised, there is a cost involved or a service performed in the transmission of funds from one place to another, else why does the Government maintain thousands of money order postoffices in which the people are charged for this very same character of service and at higher average rates than those charged by the banks in question?

The Federal Reserve System has in the exercise of its fundamental functions demonstrated its usefulness and value; it is now firmly established, it is strongly intrenched in public favor, its future growth and prosperity is in no sense dependent on its ability to furnish its members universal par facilities.

I believe a great wrong is being perpetrated in employing the tremendous power and resources of the Federal Reserve System in an invasion of the vested rights of institutions that have no connection whatever with the System. I believe the methods now being employed to whip objecting banks into line are arbitrary and tyrannical in the last degree and that these methods are justifiable only upon the theory that might makes right, a doctrine to which I am unwilling to subscribe.

It may be urged, and I fully realize that as an
38 humble director of a Branch Bank, I am not concerned with or responsible for the policies and practices ordered by the governing body at Washington, but my convictions in this matter are so positive that I am unwilling to give to these coercive measures that degree of sanction that might be implied from my official connection with a branch of the system now engaged in carrying them out.

I, therefore, respectfully tender my resignation as a director of the Houston Branch, to be effective at your earliest convenience.

Yours very truly,
(Signed) J. A. PONDROM.

Georgia, Fulton County.

You, Alex W. Smith, do swear that that you are of counsel for the Plaintiffs in said case, all of whom are now residents of the City of Atlanta and County of Fulton County where said case is now being heard, and that the allegations of the foregoing amendment are true in manner and form as alleged.

ALEX W. SMITH.

Sworn to and subscribed before me March 24, 1920.
F. L. BEERS,
Deputy Clerk U. S. District Court, Northern District of Georgia.

Filed in open Court, March 24, 1920.
O. C. FULLER, Clerk.
By J. C. BOONE, Deputy Clk.

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29 ORDER.

In the District Court of the United States, for the Northern District of Georgia.

American Bank & Trust Company et al
vs. No. 14, In Equity.
The Federal Reserve Bank, et al.

The within amendment allowed and ordered filed subject to objection.

This March 23, 1920.

BEVERLY W. EVANS,
U. S. Judge.

Service acknowledged. Copy received.
This March 23, 1920.

RANDOLPH & PARKER,
Attys. for Defendants.

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60 MOTION TO REMAND.

In the District Court of the United States for the Northern District of Georgia.

American Bank & Trust Co. et al.

vs.

Federal Reserve Bank of Atlanta, et al.

No. 44,323, Fulton Superior Court, In Equity.

No. 138, In Equity, U. S. Court by Removal.

Now come the American Bank & Trust Co., of Cordele, Crisp County, Ga.; the Pitts Banking Co., of Pitts, Ga.; Bank of Sale City, Sale City, Ga.; The Bartow Bank, of Bartow, Jefferson County, Ga.; the Farmers Bank of Ableville, Ga.; Union Banking Co., of Alamo, Ga.; Bank of Newton County, of Covington, Newton County, Ga.; Citizens Bank, of Helena, Ga.; Bank of Collins, at Collins, Ga.; Bank of Manchester, of Manchester, Meriwether County, Ga.; Farmers & Merchants Bank, of Lumber City, Ga.; Farmers & Merchants Bank, of Jackson, Butts County, Ga.; The Farmers Bank of Jenkinsburg, Ga.; the Exchange Bank, of Cordele, Ga.; and

American Banking Corp., Vienna, Ga.; Ball Ground Bank, Ball Ground, Ga.; Bank of Adairsville, Adairsville, Ga.; Bank of Acworth, Acworth, Ga.; Bank of Baconton, Baconton, Ga.; Bank of Bowersville, Bowersville, Ga.; Bank of Bullochville, Bullochville, Ga.; Bank of Byronville, Bryronville, Ga.; Bank of Chatsworth, Chatsworth, Ga.; Bank of Cherokee, Canton, Ga.; Bank of Chipley, Chipley, Ga.; Bank of Chomney, Chomney, Ga.; Bank of Clayton Co., Jonesboro, Ga.; Bank of Clayton, Clayton, Ga.; Bank of Conyers, Conyers, Ga.; Bank of Covington, Covington, Ga.; Bank of Culloden, Culloden, Ga.; Bank of Dallas, Dallas, Ga ; Bank of Duluth, Duluth, Ga.; Bank of Edison, Edison, Ga.; Bank of Ellenton, Ellenton, Ga.; Bank of Ellaville, Ellaville, Ga.; Bank of Ellijay, Ellijay, Ga.; Bank of Hamilton, Hamilton, Ga.; Bank of Leesburg, Leesburg, Ga.; Bank of Lumpkin, Dahlonega, Ga.; Bank of Meigs, Meigs, Ga.; Bank of Menlo, Menlo, Ga.; Bank of Milan, Milan, Ga.; Bank of Molena, Molena, Ga.; Bank of Ochlochnee, Ochlochnee, Ga.; Bank of Omega, Omega, Ga.; Bank of Palmetto, Palmetto, Ga.; Bank of Parrott, Parrott, Ga.; Bank of Pinehurst, Pinehurst, Ga.; Bank of Pineview, Pine View, Ga.; Bank of Plainville, Plainville, Ga.; Bank of Powder Springs, Powder Springs, Ga.; Bank of Poulan, Poulan, Ga.; Bank of Reidsville, Reidsville, Ga.; Bank of Ringgold, Ringgold, Ga.; Bank of Rockdale, Conyers, Ga.; Bank of Roopville, Roopville, Ga.; Bank of Social Circle, Social Circle, Ga.; Bank of Soperton, Soperton, Ga.; Bank of Sparks, Sparks, Ga.; Bank of Stapleton, Stapleton, Ga.; Bank of Tallapoosa, Tallapoosa, Ga.; Bank of Thomaston, Thomaston, Ga.; Bank of Toccoa, Toccoa, Ga.; Bank of Unadilla, Unadilla, Ga.; Bank of Vidalia, Vidalis, Ga.; Bank of Vienna, Vienna, Ga.; Bank of Waynesboro, Waynesboro, Ga.; Bank of Williamson, Williamson, Ga.; Barney Banking Co., Barney, Ga.; Bishop Banking Company, Bishop,

Ga.; Brodnax Banking Co., Walnut Grove, Ga.;
61 Brown Banking Co., Rochelle, Ga.; Buena Vista Loan & Savings Bank, Buena Vista, Ga.; Chatooga Co. Bank, Summerville, Ga.; Citizens Bank of Barnesville, Barnesville, Ga.; Citizens Bank of Carrollton, Carrollton, Ga.; Citizens Bank of Claxton, Claxton, Ga.; Citizens Bank of Cochran, Cochran, Ga.; Citizens Bank of Cordele, Cordele, Ga.; Commercial Bank, Metcalf, Ga.; Commercial Bank, Unadilla, Ga.; Concord Banking Co., Concord, Ga.; Cornelia Bank, Cornelia, Ga.; Citizens Bank, Kite, Ga.; Dacula Banking Co., Dacula, Ga.; Exchange Bank of Cordele, Cordele, Ga.; Exchange Bank of Wrightsville, Wrightsville, Ga.; Fairmount Bank, Fairmount, Ga.; Farmers Bank, Bowman, Ga.; Farmers Bank, Pulaski, Ga.; Farmers & Merchants Bank, Millertown, Ga.; Farmers & Citizens Bank, Dawsonville, Ga.; Farmers & Merchants Bank, Garfield, Ga.; Farmers & Merchants Bank, Rebecca, Ga.; Farmers & Merchants Bank, Junction City, Ga.; Farmers & Merchants Bank, Thomaston, Ga.; Greenville Banking Co., Gay Branch, Gay, Ga.; Jesup Banking Co., Jesup, Ga.; Logansville Banking Co.; Logansville, Ga.; Macon Co. Bank, Oglethorpe, Ga.; Milton Co. Bank, Alpharetta, Ga.; Mt. Vernon Bank, Mt. Vernon, Ga.; Oglethorpe Co. Bank, Lexington, Ga.; Perry Loan & Savings Bank, Perry, Ga.; Pickens Co. Bank, Jasper, Ga.; Planters Bank, Hogansville, Ga.; Planters State Bank, Davisboro, Ga.; Shellman Banking Co., Shellman, Ga.; State Bank, Manchester, Ga.; Sylvester Banking Co., Sylvester, Ga.; The Bank of Thomson, Thomson, Ga.; The Citizens Bank, Locust Grove, Ga.; The Claxton Bank, Claxton, Ga.; The Darien Bank, Darien, Ga.; The Farmers Bank, Alpharetta, Ga.; The Farmers Bank, Bronwood, Ga.; The Farmers Bank, Monroe, Ga.; The Farmers Bank, Woodcliff, Ga.; The Peoples Bank, Summit, Ga.; The Peoples Bank, Ideal, Ga.; The Peoples Bank,

Comer, Ga.; The Farmers Bank, Glenwood, Ga.; Triggs Co. Bank, Jeffersonville, Ga.; The Rockmart Bank, Rockmart, Ga.; The Mt. Vernon Bank, Mt. Vernon, Ga.; The Merchants Bank, McRae, Ga.; Upson Banking & Trust Co., Thomaston, Ga.; Wilkinson Co. Bank, Toomsboro, Ga.; Woodland Bank, Woodland, Ga.; Yatesville Banking Co., Yatesville, Ga.; Royston Bank, Royston, Ga.; Farmers & Merchants Bank, Warthen, Ga.; which said banks were made parties on Jan. 19th, 1920, and

Farmers & Merchants Bank, Logansville, Ga.; Farmers & Merchants Bank, Toccoa, Ga.; Bank of Buford, Buford, Ga.; Bank of Columbia Co., Harlem, Ga.; Bank of Brooklet, Brooklet, Ga.; Bank of Canton, Canton, Ga.; Bank of Chauncey, Chauncey, Ga.; Bank of Bowman, Bowman, Ga.; Bank of Gwinnett, Norcross, Ga.; Bank of Leslie, Leslie, Ga.; Bank of Lexington, Lexington, Ga.; Bank of Monroe, Monroe, Ga.; Bank of Scotland, Scotland, Ga.; Bank of Trion, Trion, Ga.; Braselton Banking Co., Braselton, Ga.; Citizens Bank of Roswell, Roswell, Ga.; Jasper Co. Bank, Monticello, Ga.; Merchants & Farmers Bank, Whigham, Ga.; The Brand Banking Co., Lawrenceville, Ga.; The Bank of Alapaha, Alapaha, Ga.; The Blackshear Bank, Blackshear, Ga.; Union Banking Co., Monroe, Ga.; Luthersville Banking Co., Luthersville, Ga.; Commercial Savings Bank, Dallas, Ga.; Stovall Banking Co., Stovall, Ga.; Peoples Bank, Richland, Ga.; The Farmers Bank, Milner, Ga.; Merchants & Planters Bank, Villa Rica, Ga.; Hogansville Banking Co., Hogansville, Ga.; which said banks were made parties on Jan. 20th, 1920, and

62 Bank of Arlington, Arlington, Ga.; Bank of Warwick, Warwick, Ga.; Bank of Bowden, Bowden, Ga.; Bank of Bremen, Bremen, Ga.; Bank of Franklin Co., Carnesville, Ga.; Bank of Grantville, Grantville,

Ga.; Bank of Cartersville, Cartersville, Ga.; Bank of Lyerly, Lyerly, Ga.; Bank of Maysville, Maysville, Ga.; Bank of Metter, Metter, Ga.; Bank of Stockbridge, Stockbridge, Ga.; Bank of Wrightsville, Wrightsville, Ga.; Carrollton Bank, Carrollton, Ga.; Cohutta Banking Co., Chatsworth, Ga.; Citizens Bank of Ashburn, Ashburn, Ga.; Citizens Bank of Douglas, Douglas, Ga.; Citizens Bank of Folkston, Folkston, Ga.; Clermont Banking Co., Clermont, Ga.; Exchange Bank, Sycamore, Ga.; Farmers & Merchants Bank, Cumming, Ga.; Farmers & Merchants Bank, Duluth, Ga.; Farmers Bank of Pelham, Pelham, Ga.; Habersham Bank, Clarkesville, Ga.; Farmers State Bank, Lumpkin, Ga.; Merchants & Farmers Bank, Willacoochee, Ga.; Montrose Banking Co., Montrose, Ga.; Peoples Bank, Carrollton, Ga.; Peoples Bank, Oliver, Ga.; Peoples Bank, Gordon, Ga.; Planters Bank, Carlton, Ga.; Shadburn Banking Co., Buford, Ga.; S. Lemon Banking Co., Acworth, Ga.; The Union Banking Co., Douglas, Ga.; The Planters Bank, Sycamore, Ga.; Peoples Savings Bank, Waynesboro, Ga.; Farmers Banking Co., Waverly Hall, Ga.; Peoples Bank of Woodbury, Woodbury, Ga.; which said banks were made parties on Jan. 24th, 1920, and

Ashburn Bank, Ashburn, Ga.; Barnesville Bank, Barnesville, Ga.; Bank of Cusseta, Cusseta, Ga.; Bank of Campbell Co., Fairburn, Ga.; Bank of Crawford, Crawford, Ga.; Bank of Cuthbert, Cuthbert, Ga.; Bank of Dahlonega, Dahlonega, Ga.; Bank of Dudley, Dudley, Ga.; Bank of Eatonton, Eatonton, Ga.; Bank of Emanuel, Swanson, Ga.; Bank of Forsyth, Forsyth, Ga.; Bank of Hapeville, Hapeville, Ga.; Bank of Hahira, Hahira, Ga.; Bank of Lumpkin Co., Dahlonega, Ga.; Bank of Locust Grove, Locust Grove, Ga.; Bank of Montezuma, Montezuma, Ga.; Bank of Preston, Preston, Ga.; Bank of Suwanee, Suwanee, Ga.; Bank of Smithville, Smith-

ville, Ga.; Bank of Smyrna, Smyrna, Ga.; Bank of Tifton, Tifton, Ga.; Bank of Union Point, Union Point, Ga.; Bank of Taylorsville, Taylorsville, Ga.; Bank of Weston, Weston, Ga.; Bank of Woodstock, Woodstock, Ga.; Bank of Zebulon, Zebulon, Ga.; Bank of Kingsland, Kingsland, Ga.; Butler Banking Co., Butler, Ga.; Citizens Bank, Blakely, Ga.; Exchange Bank, Fort Valley, Ga.; Farmers & Merchants Bank, Cumming, Ga.; Farmers & Merchants Bank, Brewton, Ga.; Farmers & Merchants Bank, Senoia, Ga.; Farmers & Merchants Bank, Quitman, Ga.; C. L. Hardwick & Co., Dalton, Ga.; Merchants & Planters Bank, Culloden, Ga.; N. Ga. Banking Co., Cohutta, Ga.; Planters Bank, Pavo, Ga.; Planters Bank of Americus, Americus, Ga.; Planters & Citizens Bank, Camilla, Ga.; Planters Bank, Stillmore, Ga.; Peoples Bank, Rebecca, Ga.; Royston Bank, Royston, Ga.; Turner Co. Bank, Ashburn, Ga.; Thompson City Bank, Thompson, Ga.; The Farmers Bank, Alamo, Ga.; The Patterson Bank, Patterson, Ga.; The Woodbury Banking Co., Woodbury, Ga.; White Co. Bank, Cleveland, Ga.; which said banks were made parties on Feb. 5th, 1920.

63 And move to remand said case to the Superior Court of Fulton County from which Court it was removed to this Honorable Court by order of said Superior Court of Fulton County, dated February 5th, 1920, and thereafter filed and docketed in this Court by defendants therein on the following grounds, to-wit:

1.

Because it appears from the record in said case, as a matter of law, that such suit does not really and substantially involve a dispute on controversy properly with-

in the jurisdiction of the District Court of the United States for the Northern District of Georgia.

2.

Because said case is not legally removable from the Superior Court of Fulton County, in which it was brought, to the District Court of the United States for the Northern District of Georgia, which would otherwise be the proper District Court of the United States to which removal thereof could be lawfully had, for that it appears from the record of said case, as a matter of law, that it is not a case of which the District Courts of the United States are given original jurisdiction under the Constitution and laws of the United States.

64 Wherefore, movants pray that said case be remanded to the Superior Court of Fulton County, Georgia, and that costs be adjudged against defendants.

SMITH, HAMMOND & SMITH,
GREEN F. JOHNSON,
Solicitors for Movants.

ALEX W. SMITH,
Of Counsel.

Filed in Clerk's Office, Feb. 26, 1920, O. C. Fuller, Clerk.

65 MOTION TO DISMISS BILL.

In the District Court of the United States for the Northern District of Georgia.

The American Bank & Trust Company, Et Al, Complainants,

vs. No. 138 In Equity.

Federal Reserve Bank of Atlanta, Et Al, Defendants.

And now come Federal Reserve Bank of Atlanta, M. B. Wellborn, Joseph A. McCord, M. W. Bell and L. C. Adelson, defendants in the above stated cause, and move the Court to dismiss the bill filed in this cause, because said bill does not state any matter of equity entitling plaintiffs to the relief prayed, nor are the facts as stated sufficient to entitle plaintiffs to any relief against defendants, or any one or more of them.

Defendants move the Court to dismiss said bill because the same is wholly without equity, in that the averments of issuable fact set out therein are insufficient to entitle the plaintiffs to the relief in and by said bill prayed.

Said bill shows on its face that the threatened acts on the part of the defendants, and each of them, to enjoin which said bill is sought to be maintained, are lawful and cannot be urged or set up under well settled principles of equity as the basis upon which to predicate the prayers for extraordinary relief in said bill contained.

Defendants move the Court to dismiss said bill because the averments thereof, stripped of the simple conclusions of the pleader, charge no facts and contain no averments sufficient to entitle the plaintiffs, nor any one of them, to the relief in equity sought in said bill.

Wherefore, defendants pray the judgment of
66 this Court whether they shall further answer, and that they be dismissed with their costs.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Solicitors and of Counsel for Defendants.

67 In the District Court of the United States, for the Northern District of Georgia.

The American Bank & Trust Company, Et Al, Complainants,
vs. No. 138 In Equity.
Federal Reserve Bank of Atlanta, Et Al, Defendants.

Defendants having filed a motion in this cause to dismiss the bill of plaintiffs upon grounds stated therein, and having requested that said motion be set down for hearing, it is ordered that said matter be heard before me on the 3rd day of March, 1920, at 10 o'clock a. m., in the United States Court room at Atlanta, Georgia, or as soon thereafter as Counsel may be heard.

It is ordered further that a copy of this order be served upon Counsel for the plaintiffs at least five days prior to the time fixed for hearing.

This 21 day of February, 1920.

SAMUEL H. SIBLEY,
United States Judge.

Filed in Clerk's Office, Feby. 21, 1920, O. C. Fuller, Clerk, by J. D. Steward, Dep. Clk.

Georgia, Fulton County:

Due and legal service of the within petition and order acknowledged, copy received, all other and further service waived.

This 23rd day of February, 1920.

SMITH, HAMMOND & SMITH,
Plaintiff's Attorneys.

Filed in Clerk's Office, Feb. 23, 1920. O. C. Fuller, Clerk, by G. R. Hood, Deputy.

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68 ACKNOWLEDMENT OF SERVICE OF INTERVENTIONS.

In the District Court of the United States for the Northern District of Georgia.

American Bank & Trust Co., Et Al,

vs. No. 138 In Equity.

Federal Reserve Bank, Et Al.

Now comes the Solicitors for the defendants in the above stated case and file as a part of the record thereof this acknowledgment of due and legal service of all interventions making parties in said cause filed between January 19, 1920, and March 24, 1920, inclusive, copy of each of said interventions having been served upon said Solicitors at the time of the filing of each of said interventions with the understanding that formal acknowledgment of service of record would be entered by undersigned Solicitors in regular course. This acknowledgment is filed in accordance with that understanding.

This March 24th, 1920.

HOLLIS N. RANDOLPH,
R. S. PARKER,
Solicitors for defendants.

Filed in Clerk's Office March 23, 1920.

O. C. FULLER, Clerk, United States District Court, Northern District of Georgia.

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69 STIPULATION OF COUNSEL.

In the District Court of the United States for the Northern District of Georgia.

American Bank & Trust Company, Et Al.

vs. No. 138 In Equity.

Federal Reserve Bank of Atlanta, Et Al.

The Court having sustained defendant's motion to dismiss the bill in the above stated case for want of equity and having accordingly entered a decree dismissing same on the 29th day of April, 1920, and the plaintiffs in said case desiring to appeal from the said judgment and decree,

It is hereby stipulated and agreed by and between the undersigned as counsel for the parties to the above stated case, that the banks named herein below are all of the banks who are parties plaintiff to the original bill or by intervention duly filed and allowed in said case; and

It is further stipulated and agreed that the repetition of their names in the Appellate proceedings prosecuted on behalf of said plaintiffs is waived and that the mere statement of the parties plaintiff and the defendant as in the caption of this stipulation is and shall be considered a full and sufficient statement of all the parties to the cause, both plaintiff and defendant.

Under and by virtue of this stipulation all banks hereinbelow listed as parties plaintiff and all defendants, both corporate and individual as named in the original bill and amendments thereto will be considered as referred to and named in full by the use whenever same is necessary, or proper, of the single plaintiff, or the single defendant named in the caption above, folled in each instance by the words "et al."

It is further stipulated and agreed that this stipulation shall be filed and be and become a part of the record in said case and as such shall be embodied in the transcript of the record on appeal, in lieu of the various interventions making parties plaintiff, which various interventions in view of this stipulation are necessary to a proper presentation of the questions involved between all of the said parties to said cause.

70

It is further stipulated and agreed that the following are parties plaintiff named either in the original bill or by intervention, to-wit:

Banks in the State of Alabama:

J. F. Hooper, Banker, Albertville,
Bank of Albertville, Albertville,
The Ariton Banking Co., Ariton,
City Bank & Trust Co., Athens,
Baldwin County Bank, Bay Minette,
Peoples Exchange Bank, Beatrice,
Brent Banking Co., Brent,
The Choctaw Bank, Butler,
Bank of Carrollton, Carrollton,
City Bank of Carbon Hill, Carbon Hill,
The Peoples Bank, Centerville,
The First State Bank, Childersville,
Clio Banking Co., Clio,
The Bank of Commerce, Clayton,

The Peoples Bank, Collinsville,
Bank of Columbia, Columbia,
Columbiana Savings Bank, Columbiana,
Bank of Dalesville, Dale,
Dora Banking & Trust Co., Dora,
Dothan Banking & Trust Co., Dothan,
Elba Bank & Trust Co., Elba,
Sumter Bank & Trust Co., Epes,
Bank of Fairhope, Fairhope,
Robertsdale State Bank, Fairhope,
Delphine State Bank, Fairhope,
Watkins Banking Co., Farmsdale,
Bank of Flomaton, Flomaton,
Bank of Florala, Florala,
Merchants & Farmers Bank, Gordo,
Bank of Gordon, Gordon,
Grand Bay State Bank, Grand Bay,
The Citizens Bank, Guntersville,
Butler County Bank, Georgiana,
Bank of Gantt, Gantt,
Bank of Heflin, Heflin,
Huntsville Bank & Trust Co., Huntsville,
Bank of Hurstboro, Hurstboro,
Farmers & Merchants Bank, Hurstboro,
Cherokee County Bank, Jackson,
Jackson Bank & Trust Co., Jackson,
The Jasper Trust Co., Jasper,
Central Bank & Trust Co., Jasper,
Farmers & Merchants Bank, Kingston,
Chambers Co., Bank, LaFayette,
Bank of Lexington, Lexington,
McMillan & Co., Bankers, Livingston,
Bank of Louisville, Louisville,
The Farmers Bank, Luverne,
The Bank of Madison, Madison,
Bank of Madrid, Madrid,

Merchants & Planters Bank, Montevallo,
The Monroe County Bank, Monroeville,
Bank of Newbern, Newbern,
The First Bank of Notasulga, Notasulga,
Bank of Brocton, New Brocton,
The Bank of Odenville, Odenville,
Orville Bank & Trust Co., Orrville,
Planters & Merchants Bank, Ozark,
Bank of Peterman, Peterman,
Bank of Pineapple, Pineapple,
71 The Bank of Pittsview, Pittsview,
Bank of Pollard, Pollard,
Autauga Bank & Trust Co., Prattville,
The Peoples Bank, Pinkard,
Bank of Ragland, Ragland,
The 1st Bank of Red Level, Red Level,
The Peoples Bank of Red Level, Red Level,
Roanoke Banking Co., Roanoke,
Peoples Bank of Roy, Roy,
Bank of Red Bay, Red Bay,
The Peoples Savings Bank, Sheffield,
Bank of Springville, Springville,
The Bank of Standing Rock, Standing Rock,
Macon County Bank, Tuskegee,
Planters & Merchants Bank, Uniontown,
Bank of Vernon, Vernon,
The Farmers & Merchants Bank, Waterloo,
Bank of Warrior, Warrior,
West Brocton Savings Bank, West Brocton,
Bank of Wedowee, Wedowee,
Winfield State Bank, Winfield,

Banks in the State of Florida:

Apalachicola State Bank, Apalachicola,
American Exchange Bank, Apalachicola,

Holmes County Bank, Bonifay,
Bunnell State Bank, Bunnell,
Callahan State Bank, Callahan,
Bank of Dunedin, Dunedin,
First State Bank, Eustis,
State Bank of Haines City, Haines City,
The Bank of Jennings, Jennings,
Bank of Osceola County, Kissimmee,
The State Exchange Bank, Lake City,
Lauderdale State Bank, Lauderdale,
Citizens State Bank, Marianna,
Bank of Monticello, Monticello,
First Bank of Moorehaven, Moorehaven,
Bank of Greenwood, Marianna,
Bank of Malone, Marianna,
Central State Bank, Marianna,
Planters Bank, Marianna,
Bank of Newberry, Newberry,
Gadsden County State Bank, River Junction,
Com'l Bank of St. Augustine, St. Augustine,
Watertown Bank, Watertown,
Bank of Palm Beach, West Palm Beach,
Bank of Williston, Williston.

Banks in the State of Georgia:

Farmers Bank, Abbeville,
Bank of Acworth, Acworth,
S. Lemon Banking Co., Acworth,
Bank of Adairsville, Adairsville,
Union Banking Co., Alamo,
The Farmers Bank, Alama,
Bank of Alapaha, Alapaha,
The Farmers Bank, Alamo,
The Farmers Bank, Alpharetta,
Milton County Bank, Alpharetta,

Planters Bank, Americus,
Bank of Arlington, Arlington,
Ashburn Bank, Ashburn,
Citizens Bank, Ashburn,
Turner County Bank, Ashburn,
Bank of Baconton, Baconton,
Ball Ground Bank, Ball Ground,
Citizens Bank, Barnesville,
72 Barney Banking Co., Barney,
Bartow Bank, Bartow,
Bishop Banking Co., Bishop,
Blackshear Bank, Blackshear,
Citizens Bank, Blakely,
Bank of Bowden, Bowden,
Bank of Bowersville, Bowersville,
Bank of Bowman, Bowman,
Farmers Bank, Bowman,
Braselton Banking Co., Braselton,
Bank of Breman, Breman,
Farmers & Merchants Bank, Brewton,
Farmers Bank, Bronwood,
Bank of Brooklet, Brooklet,
Buena Vista Ln. & Sav. Bank, Buena Vista,
Bank of Buford, Buford,
Shadburn Banking Co., Buford,
Bank of Bullochville, Bullochville,
Butler Banking Co., Butler,
Bank of Byromville, Byromville,
Planters & Citizens Bank, Camilla,
Bank of Canton, Cantor,
Bank of Cherokee, Canton,
Planters Bank, Carlton,
Bank of Franklin County, Carnesville,
Carrollton Bank, Carrollton,
Citizens Bank, Carrollton,
Peoples Bank, Carrollton,

Bank of Cartersville, Cartersville,
Bank of Cedartown, Cedartown,
Bank of Chatsworth, Chatsworth,
Cohutta Banking Co., Chatsworth,
Bank of Chauncey, Chauncey,
Bank of Chipley, Chipley,
Habersham Bank, Clarksville,
Bank of Clarksville, Clarksville,
Citizens Bank, Claxton,
Claxton Bank, Claxton,
Bank of Clayton, Clayton,
Clermont Banking Co., Clermont,
White County Bank, Cleveland,
Citizens Bank, Cochran,
Hammick, Rish & Sons, Coleman,
North Ga. Banking Co., Cohutta,
Bank of Collins, Collins,
Colquitt Exchange Bank, Colquitt,
Peoples Bank, Comer,
Concord Banking Co., Concord,
Bank of Conyers, Conyers,
Bank of Rockdale, Conyers,
American Bank & Trust Co., Cordele,
Citizens Bank, Cordele,
Exchange Bank, Cordele,
Cornelia Bank, Cornelia,
Bank of Covington, Covington,
Bank of Newton County, Covington,
Bank of Crawford, Crawford,
Bank of Culloden, Culloden,
Merchants & Planters Bank, Culloden,
Bank of Cumming, Cumming,
Farmers & Merchants Bank, Cumming,
Bank of Cusseta, Cusseta,
Bank of Cuthbert, Cuthbert,
Dacaula Banking Co., Dacaula,

Bank of Dahlonega, Dahlonega,
Bank of Lumpkin County, Dahlonega,
Bank of Dallas, Dallas,
Commercial Saving Bank, Dallas,
C. L. Hardwick & Co., Dalton,
Darien Bank, Darien,
Planters State Bank, Davisboro,
Farmers & Citizens Bank, Dawsonville,
Bank of Dearing, Dearing,
73 Citizens Bank, Douglas,
Union Banking Co., Douglas,
Farmers & Merchants Bank, Douglasville,
Bank of Dudley, Dudley,
Bank of Duluth, Duluth,
Farmers & Merchants Bank, Duluth,
Bank of East Point, East Point,
Bank of Eatonton, Eatonton,
Bank of Edison, Edison,
Bank of Elberton, Elberton,
Bank of Ellaville, Ellaville,
Bank of Ellenwood, Ellenwood,
Bank of Ellijay, Ellijay,
Bank of Campbell County, Fairburn,
Fairmount Banking Co., Fairmount,
Citizens Bank, Folkston,
Bank of Forsyth, Forsyth,
Exchange Bank, Fort Valley,
Farmers & Merchants Bank, Garfield,
Greenville Banking Co. (Branch), Gay,
Farmers Bank, Glenwood,
Bank of Godfrey, Godfrey,
Farmers & Merchants Bank, Gordon,
Peoples Bank, Gordon,
Bank of Grantville, Grantville,
Bank of Graymount, Graymount,
Bank of Hahira, Hahira,

Bank of Hamilton, Hamilton,
Bank of Hapeville, Hapeville,
Bank of Columbia County, Harlem,
Citizens Bank, Helena,
Hogansville Banking Co., Hogansville,
Planters Bank, Hogansville,
The Peoples Bank, Ideal,
Farmers & Merchants Bank, Jackson,
Pickens County Bank, Jasper,
Twiggs County Bank, Jeffersonville,
Farmers Bank, Jenkinsburg,
Jesup Banking Co., Jesup,
Bank of Clayton County, Jonesboro,
Farmers & Merchants Bank, Junction City,
State Bank of Kingsland, Kingsland,
Citizens Bank, Kite,
Brand Banking Co., Lawrenceville,
Bank of Leesburg, Leesburg,
Bank of Leslie, Leslie,
Bank of Lexington, Lexington,
Oglethorpe County Bank, Lexington,
Bank of Locust Grove, Locust Grove,
Citizens Bank, Locust Grove,
Farmers & Merchants Bank, Logansville,
Logansville Banking Co., Logansville,
Farmers & Merchants Bank, Lumber City,
Bank of Lumpkin, Lumpkin,
Farmers State Bank, Lumpkin,
Luthersville Banking Co., Luthersville,
Bank of Lyerly, Lyerly,
Bank of Madison, Madison,
Bank of Manchester, Manchester,
State Bank of Manchester, Manchester,
Bank of Maysville, Maysville,
Merchants Bank, McRae,
Bank of Meigs, Meigs,

Bank of Menlo, Menlo,
Commercial Bank, Metcalf,
Bank of Metter, Metter,
Bank of Milan, Milan,
Farmers & Merchants Bank, Milltown,
Farmers Bank, Milner,
Bank of Molena, Molena,
Bank of Monroe, Monroe,
Farmers Bank, Monroe,
74 Union Banking Co., Monroe,
Bank of Montezuma, Montezuma,
Jasper County Bank, Monticello,
Montrose Banking Co., Montrose,
Mt. Vernon Bank, Mt. Vernon,
Bank of Newborn, Newborn,
Bank of Gwinnett, Norcross,
Bank of Ochlochnee, Ochlochnee,
Macon County Bank, Oglethorpe,
Peoples Bank, Oliver,
Bank of Omega, Omega,
Bank of Palmetto, Palmetto,
Bank of Parrott, Parrott,
Patterson Bank, Patterson,
Farmers Bank, Pelham,
Perry Loan & Savings Bank, Perry,
Bank of Pinehurst, Pinehurst,
Bank of Pineview, Pineview,
Pitts Banking Co., Pitts,
Bank of Plainville, Plainville,
Bank of Poulan, Poulan,
Bank of Powder Springs, Powder Springs,
Farmers Bank, Pulaski,
Farmers & Merchants Bank, Quitman,
Citizens Bank, Ray City,
Farmers & Merchants Bank, Rebecca,
Peoples Bank, Rebecca,

Bank of Reidsville, Reidsville,
Peoples Bank, Richland,
Bank of Ringgold, Ringgold,
Brown Banking Co., Rochelle,
Rockmart Bank, Rockmart,
Bank of Roopville, Roopville,
Citizens Bank, Roswell,
Farmers Bank, Royston,
Royston Bank, Royston,
Bank of Sale City, Sale City,
Bank of Scotland, Scotland,
Farmers & Merchants Bank, Senoia,
Bank of Shady Dale, Shady Dale,
Shellman Banking Co., Shellman,
Bank of Smithville, Smithville,
Bank of Smyrna, Smyrna,
Bank of Social Circle, Social Circle,
Bank of Soperton, Soperton,
Bank of Sparks, Sparks,
Bank of Stapleton, Stapleton,
Bank of Statham, Statham,
Planters Bank, Stillmore,
Bank of Stockbridge, Stockbridge,
Granite Bank, Stone Mountain,
Stoval Banking Co., Stovall,
Bank of Commerce, Sommerville,
Chattahoochee County Bank, Sommerville,
Bank of Suwanee, Suwanee,
Peoples Bank, Summit,
Bank of Emanuel, Swanson,
Exchange Bank, Sycamore,
Planters Bank, Sycamore,
Sylvester Banking Co., Sylvester,
Bank of Tallapoosa, Tallapoosa,
Bank of Taylorsville, Taylorsville,
Bank of Thomaston, Thomaston,

Farmers & Merchants Bank, Thomaston,
Upson Banking & Trust Co., Thomaston,
Bank of Thomson, Thomson,
Thomson City Bank, Thomson,
Bank of Tifton, Tifton,
Bank of Toccoa, Toccoa,
Farmers & Merchants Bank, Toccoa,
Wilkinson Co. Bank, Toomsboro,
Bank of Trion, Trion,
Bank of Unadilla, Unadilla,
Commercial Bank, Unadilla,
Bank of Union Point, Union Point,
Bank of Vidalia, Vidalia,
Bank of Vienna, Vienna,
Bank of Villa Rica, Villa Rica,
Merchants & Planters Bank, Villa Rica,
Broadnax Banking Co., Walnut Grove,
Farmers & Merchants Bank, Warthen,
Bank of Warwick, Warwick,
Farmers Banking Co., Waverly Hall,
Bank of Waynesboro, Waynesboro,
Peoples Savings Bank, Waynesboro,
Bank of Weston, Weston,
Merchants & Planters Bank, Whigham,
Merchants & Farmers Bank, Willacoochee,
Bank of Williamson, Williamson,
Peoples Bank, Woodbury,
Woodbury Banking Co., Woodbury,
Farmers Bank, Woodcliff,
Woodland Bank, Woodland,
Bank of Woodstock, Woodstock,
Bank of Wrightsville, Wrightsville,
Exchange Bank, Wrightsville,
Yatesville Banking Co., Yatesville,
Bank of Zebulon, Zebulon.

Banks in the State of Louisiana:

First State Bank of Bogalusa, Bogalusa,
Kentwood Bank of Kentwood, Kentwood,
Security Bank of Amite, Amite,

Banks in the State of Mississippi:

The Merchants Bank, Bay St. Louis,
Peoples Bank, Biloxi,
Canton Exchange, Canton,
Bank of Centerville, Centerville,
Bank of Clinton, Clinton,
Bank of Collins, Collins,
Citizens Bank, Columbia,
Columbia Bank, Columbia,
Crystal Springs Bank, Crystal Springs,
Commercial Bank, DeKalb,
D'Lo Guaranty Bank, D'Lo,
Merchants & Manufacturers Bank, Ellisville,
Georgetown Bank, Georgetown,
Bank of Goodman, Goodman,
Bank of Gulfport, Gulfport,
Bank of Hattiesburg & Trust Co., Hattiesburg,
Bank of Hazlehurst, Hazlehurst,
Bank of Lucedale, Lucedale,
City Bank of McHenry, McHenry,
Bank of McLain, McLain,
Bank of Commerce, Natchez,
Ocean Springs State Bank, Ocean Springs,
Bank of Pachuta, Pachuta,
Citizens Bank, Philadelphia,
Bank of Picayune, Picayune,
Bank of Commerce, Poplarville,
76 Miss. Sou. Bank, Port Gibson,
Bank of Blountville, Prentiss,

Bank of Richton, Richton,
Citizens Exchange Bank, State Line,
Merchants & Planters Bank, Waynesboro,
Bank of Wesson, Wesson,
Bank of Mize, Mize,
Perry County Bank, New Augusta,
Port Gibson Bank, Port Gibson,
Bank of Yazoo City, Yazoo City,
Delta Bank & Trust Co., Yazoo City,
Bank of Terry, Terry.

Banks in the State of Tennessee:

Bank of Lovetto, Lovetto, Tenn.

This 3rd day of May, 1920.

SMITH, HAMMOND & SMITH,
HARDEMAN, JONES, PARK & JOHNSTON,
TILLMAN, BRADLEY & MORROW,
WATKINS & WATKINS,
GREENE F. JOHNSON,
STEVENS, McCORVEY & McLEOD,
Plaintiff's Attorneys.

ALEX. W. SMITH,
Of Counsel.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Defendant's Attorneys.

Order Allowing Stipulation.

It is ordered that the within and foregoing stipulation of counsel be allowed and filed, and be and become a part of the record in said case, so that same may be embodied in the transcript of the record on appeal, for the objects and purposes therein fully set forth. This 6th day of May, 1920.

BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, May 21st, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy Clerk.

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77 ORDER OVERRULING MOTION TO REMAND.

In the District Court of the United States for the Northern District of Georgia.

The American Bank & Trust Co., et al.,

v. No. 138 In Equity.

Federal Reserve Bank of Atlanta, et al.

This cause coming on before me to be heard upon motion filed by the plaintiffs to remand said cause to the Superior Court of Fulton County, Georgia, from which said Court said cause was removed upon the petition of the defendants and, after argument by Counsel and a consideration of the same, it is ordered, adjudged and decreed that the said motion to remand be, and the same

is hereby overruled and denied, and jurisdiction of the said cause be retained.

This 29 day of April, 1920.

BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, May 17, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

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78 ORDER OF DISMISSAL AND SUPERSEDEAS.

In the District Court of the United States for the Northern District of Georgia.

The American Bank & Trust Co., et al,

v. No. 138 In Equity.

Federal Reserve Bank of Atlanta, et al.

This cause coming on before me to be heard upon motion of the defendants filed herein to dismiss the bill of plaintiffs for want of equity, and for the reasons stated in the motion, and the Court having heard argument of Counsel and having taken the cause under advisement, it is, after a consideration thereof, ordered, adjudged and decreed that the said motion to dismiss said bill be, and the same is, hereby granted and sustained, and the said cause is dismissed for want of equity.

Counsel for plaintiffs having given notice that an appeal is to be taken from this judgment, and having requested a supersedeas thereof pending the taking of such appeal, it is further ordered and decreed that this

order and judgment be superseded for the space of thirty days from the date hereof.

This 29 day of April, 1920.

BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, May 17, 1920. O. C. Fuller, Clerk, by C. A. McIrew, Deputy.

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79 OPINION OF THE COURT.

In the District Court of the United States for the Northern District of Georgia.

The American Bank & Trust Co., et al.,
vs.
Federal Reserve Bank of Atlanta, et al.

Smith, Hammond & Smith, for Plaintiffs;
Hollins N. Randolph and Robert S. Parker, for Defendants.

BEVERLY D. EVANS, District Judge:

Several State Banks filed in the Superior Court of Fulton County, Georgia, an equitable petition against the Federal Reserve Bank of Atlanta, and certain of its officials, alleging that the Reserve Bank had declared a policy of "par clearance," set forth in an exhibit to the petition, and that to enforce such policy it was the purpose of the Reserve Bank to receive and collect checks drawn on the drawee banks, by causing them to be presented over the counter of such banks by an agent of the Reserve Bank, instead of sending the checks through the customary channels of correspondent banks

or clearing houses; that this course of business was intended to coerce State banks into becoming members of the Reserve system and was ultra vires of the powers of the Federal Reserve Bank and would deprive petitioning banks and others in like position of the customary compensation for collection and remittance where checks reached them for payment under the present method of doing business. The principal prayer of the petition was to restrain the defendants from the adoption of any method of collecting checks drawn against petitioners except through the usual and ordinary channel of collecting checks through correspondent banks or clearing houses. The case was removed to the United States District Court of the Northern District of Georgia. Motions were made to remand the cause and also to dismiss the petition.

80 The motion to remand must be denied. The principal defendant is the Federal Reserve Bank of Atlanta, Georgia, incorporated by the Congress of the United States. The District Courts of the United States have jurisdiction of all suits of a civil nature, at common law or in equity, where the matter arises under the Constitution and laws of the United States. Judicial Code, Section 24. A suit against a corporation created and organized under and pursuant to the Federal Reserve Act is one arising under a law of the United States. Osborn v. Bank, 9 Wheaton 738; Bankers Trust Company v. Tex. & Pac. Ry. Co., 241 U. S. 295.

A Federal Reserve Bank is not a National Banking Association within the scope and meaning of the Acts of Congress of July 12, 1882, August 13, 1888, and Judicial Code, Section 11, which place national banking associations, for the purpose of action by and against them, upon the footing of other citizens. National banking associations and the subsequently created Reserve

Banks are not ejusdem generis; their functions are different, and their chief characteristics are so unlike that it can not be supposed that Congress intended them to be included in the former legislation. A cursory reading of the Federal Reserve Banking Act discloses that its great object is to give elasticity to the national currency, and to prevent congestion in commercial centers. National banking associations are member banks of the Reserve system. The National Reserve Board is empowered to examine into the affairs of a national banking association; to supervise through the bureau under the charge of the Comptroller of Currency the issue and retirement of Federal Reserve notes; to grant national banking associations the right to act as trustee, executor or administrator; to permit member banks to carry in the Federal Reserve Banks of their respective districts and portion of their reserves required to be held in their own vaults, etc. The general object of the Federal Reserve system would be thwarted if the Reserve Banks could only sue and be sued under the same conditions as national banking associations.

Furthermore, the petition expressly raised the point that the actings of the Federal Reserve Bank
81 complained of are untra vires the act of incorporation. Clearly this raises a Federal question, because the plaintiffs' case can not be adjudicated without construing a law of the United States.

The motion to dismiss must be granted. When the allegations of the bill with its legal conclusions and interesting historical statement as to the origin and scope of State banks are reduced to their last analysis, the charge of complaining banks is, that the Reserve Bank is without the power, (or, if it has the power, it should be restrained from exercising it), to collect checks on banks of deposit received by it in the course of business by presenting them for payment through agents

over the counter of the drawee banks. That this method of collecting checks will deprive the drawee banks of the revenue previously enjoyed where checks on them came through the mails from correspondent banks does not make the transaction unlawful. It is the duty of the drawee bank to pay a check of the drawer, if it holds sufficient funds of the drawer to pay it. It is no less the duty of the drawee bank to pay several checks than it is to pay a single check, when presented over the counter within banking hours. The policy of the Reserve Bank of Atlanta, as outlined in the petition, is neither ultra vires nor unlawful. It is not to be presumed that the agency employed by the Federal Reserve Bank will act otherwise than may be lawful and proper in the presentation of the checks for payment. The allegations of conspiracy are lacking in essential features to charge an actionable wrong.

Accordingly, orders may be presented denying the motion to remand and granting the motion to dismiss the bill.

This April 3rd, 1920.

BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, April 5, 1920. O. C. Fuller, Clerk.

82 PETITION FOR APPEAL.

In the United States District Court for the Northern District of Georgia.

American Bank & Trust Company, Et Al,
vs. No. 138, In Equity.
Federal Reserve Bank of Atlanta, Et Al.

The following named plaintiffs and interveners in the above stated case, to-wit: American Bank & Trust Company, et al., as listed in stipulation of counsel dated May 3rd, 1920, conceiving themselves aggrieved by the orders and decrees made and entered on the 29th of April, 1920, in the above entitled case, do hereby appeal from said orders and decrees to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

AMERICAN BANK & TRUST COMPANY, et al.
By SMITH, HAMMOND & SMITH,
Solicitors for Plaintiffs and Interveners.

ALEX. W. SMITH,
Of Counsel.

The foregoing claim of appeal is allowed.
Dated: This 20 day of May, 1920.
BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, May 21, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

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83 ASSIGNMENT OF ERROR.

In he United States District Court for the Northern District of Georgia.

American Bank & Trust Company, Et Al,
vs. No. 138, In Equity.
Federal Reserve Bank of Atlanta, Et Al.

And now on the 20 day of May, 1920, came the plaintiffs and interveners in the above stated case, American Bank & Trust Company, et al., as per stipulation of May 3, 1920, by Alexander W. Smith, their Solicitor, and say that the decree in said cause is erroneous, and against the just rights of these complainants for the following reasons:

First. Said District Court was without jurisdiction to hear and determine said cause on the 29th day of April, 1920. Said District Court erroneously overruled complainants' motion to remand said cause to the Superior Court of Fulton County, Georgia, because:

(a) The record in said cause does not present a case removable from the State Court to the District Court of the United States under the statutes governing such case.

(b) The requisite diverse citizenship required as a condition precedent to the jurisdiction of said District Court under a petition for removal, does not exist.

84 (c) The defendant, the Federal Reserve Bank of Atlanta, is a national bank chartered under the Acts of Congress, and as such is a citizen of the State of Georgia in which it is located, and under the statutes governing suits by and against national banks was not entitled to remove said cause from the Superior Court of Fulton County to the District Court of the United States for the Northern District of Georgia.

Second: Said District Court erroneously dismissed plaintiffs' bill upon motion by decree entered April 29th, 1920, because:

(a) The Federal Reserve Bank of Atlanta has no power under its charter, and the terms and provisions of the Federal Reserve Act, to handle on deposit, or for collection, checks drawn on any bank which involved the payment of any charge for their collection or their payment and the remission of the proceeds thereof by exchange or otherwise.

(b) The methods of handling and collecting checks drawn on the plaintiffs and interveners, or any of them, which the Federal Reserve Bank of Atlanta announced it intended to employ, are illegal as to it, and would, as to plaintiffs and interveners, be embarassing, annoying and expensive, and would operate to deprive them of an existing legal right, which amounts to a property right, to make reasonable charges for the services of transmitting the proceeds of said checks to the payees or holders thereof in the regular course of their business.

(c) Under the allegations of the bill, as amended, admitted to be true by the motion to dismiss in the nature of a demurrer, concerted action amounting to a con-

spiracy is in process among the twelve (12) Federal Reserve Banks in the United States to coerce plaintiffs and interveners and all other banks in like situation in the United States to abandon and forego their legal property right to charge a reasonable compensation for the services of remitting funds from one point to another in the United States of America, in accordance
85 with long established rules and practices with respect thereto, the existence of which is recognized in all banking business, and specifically preserved and safeguarded under the terms of the Federal Reserve Act under which said Federal Reserve Banks were created. Such concerted action amounts to a conspiracy to injure and damage plaintiffs and interveners and all other banks in like situation, and entitled them to the injunction prayed for in said bill, and the dismissal of said bill and consequent denial of said injunction is error.

Wherefore, plaintiffs and interveners pray that said decree may be reversed, and that said Court may be directed to remand said case to the Superior Court of Fulton County, or else to enter a decree in accordance with the prayer of the bill.

SMITH, HAMMOND & SMITH,
Solicitors for Plaintiffs.

ALEX. W. SMITH,
ORVILLE A. PARK,
M. M. BALDWIN,
M. T. STEVENS,
Of Counsel.

Filed in Clerk's Office, May 21, 1920, O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

86 APPEAL BOND.

In the United States District Court for the Northern District of Georgia.

American Bank & Trust Company, Et Al.,
vs. No. 138 In Equity.
Federal Reserve Bank of Atlanta, Et Al.

Know all men by these presents:

That we, American Bank & Trust Co., et al., plaintiffs and interveners in said case, as per stipulation of May 3, 1920, as principals, and United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Federal Reserve Bank of Atlanta, and M. B. Wellborn, L. C. Adelson, W. W. Bell, and Joseph A. McCord, in the full and just sum of $10,000.00, to be paid to the said obligees, their certain attorneys, successors, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, and our successors, jointly and severally by these presents.

Sealed with our seals and dated this 20 day of May, in the year of our Lord one thousand nine hundred and twenty.

Whereas, lately at a District Court of the United States for the Northern District of Georgia, in a suit pending in said Court between said obligors, as plaintiffs and interveners, and said obligees, as defendants, a decree was rendered against the plaintiffs and interveners, and the said plaintiffs and interveners, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said obligees citing and admonishing them to be and

87 appear at a session of the United States Cir-

cuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, in said Circuit, on the 28th day of May, next; and

Whereas, on application of the plaintiffs, said orders and decrees are superseded, and the restraining order heretofore granted in said cause is continued of force pending disposition of said appeal in the Appellate Courts.

Now, the condition of the above obligation is such that if the said obligors shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN BANK & TRUST CO., ET AL.,
As Principals, all as
Named in the stipulation of May 3, 1920, of record,

By SMITH, HAMMOND & SMITH,
Their Solicitors of Record.

UNITED STATES FIDELITY & GUARANTY CO.,
By FRANK H. REYNOLDS,
General Agent,
As Surety.
(Seal)

Approved by:

BEVERLY D. EVANS,
United States District Judge.

Filed in Clerk's Office, May 21, 1920, O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

88 ORDER.

In the United States District Court for the Northern District of Georgia.

American Bank & Trust Company, Et Al.,

vs. No. 138, In Equity.

Federal Reserve Bank of Atlanta, Et Al.

The above-named plaintiffs, having presented their petition for appeal in said case, the same having been allowed by the Court, and having petitioned the Court for a supersedeas of the orders and decrees of April 29, 1920, and a continuation of the restraining order heretofore granted in said cause, pending disposition of said appeal in the Appellate Courts, and having given notice to Counsel for the defendants of said application, and tendered good and sufficient bond in the amount prescribed by the Court, it is now ordered that said appeal shall operate as a supersedeas of the orders and decrees of April 29, 1920, and the restraining order heretofore granted in said case shall remain in effect pending disposition of said appeal in the Appellate Courts, upon filing of the bond presented to the Court herewith in the penalty of $10,000.00.

The United States Fidelity & Guarantee Company, of Baltimore, Maryland, is accepted on said bond as surety, and said bond is now approved.

This 20 day of May, 1920.

BEVERLY D. EVANS,
United States Judge.

Filed in Clerk's Office, May 21, 1920, O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

89 PRAECIPE.

In the United States District Court for the Northern District of Georgia.

American Bank & Trust Company, Et Al.,
vs. No. 138 In Equity.
Federal Reserve Bank of Atlanta, Et Al.

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to an appeal allowed in the above-entitled case, and to be included in such transcript of record the following, and no other papers and exhibits, to-wit:

1. The entire transcript of record filed in said Court pursuant to the removal of said case by the defendants therein, except the interventions allowed on January 19, January 20, January 24, and February 3, 1920.

2. The amendments filed by plaintiffs on March 24th, 1920, and order thereon of March 23, 1920.

3. The motion to remand said case to the Superior Court of Fulton County, Georgia, filed by the plaintiffs therein.

4. The motion to dismiss said bill filed by the defendants therein.

5. The order of Honorable Samuel H. Sibley, Judge of the District Court of the United States, for the Northern District of Georgia, disqualifying himself in the above case, same being dated Feb. 23rd, 1920.

6. The order of the Honorable Richard H. Walker, Senor United States Circuit Judge for the Fifth Circuit, designating and appointing the Honorable Beverly D. Evans, Judge of the District Court of the
99 United States for the Southern District of Georgia, to try and dispose of the above case, same being dated Feb. 25th, 1920.

7. The stipulation of counsel for plaintiffs and defendants, dated May 3rd, 1920, and covering the several parties to said case and the naming and designation thereof, which by order of the Court of May 6, 1920, was made a part of the record in said case.

8. The order and decree of the Court overruling the motion to remand said case, dated April 29th, 1920.

9. The order and decree of the Court dismissing said bill, dated April 29th, 1920, and the opinion of the Court on which both said orders are based.

10. The petition for appeal.

11. The citation of appeal.

12. The assignment of error.

13. The appeal bond.

14. This praecipe.

The order of May 20, 1920, granting supersedeas and continuing the restraining order.

Respectfully,

SMITH, HAMMOND & SMITH,
Appellant's Solicitors.
ALEX. W. SMITH,
Of Counsel.

Due and legal service acknowledged.

This 21 day of May, 1920.

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Solicitors for Defendants.

Filed in Clerk's Office, May 21, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

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91 Citation omitted from Printed Record, being filed in the original.

* * * * * * * *

92 United States of America,
Northern District of Georgia,
Northern Division.

I, OLIN C. FULLER, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached ninety-one pages of printing and writing contains a true, full, correct and complete copy of the original—Transcript of the Record from the Superior Court of Fulton County, Georgia, Amendment to Original Bill, Exhibit to Amendment, Order allowing same, Motion to Remand, Motion to Dismiss Bill, Order to show Cause, Disqualification of Hon. Sam'l H. Sibley, U. S. Judge, Order Designating Hon. Beverly D. Evans, U. S. Judge, to hear case, Acknowledgment of Service of Interventions, Stipulation of Counsel and Order thereon, Order Overruling Motion to Remand, Order of Dismissal and Supersedeas, Opinion of the Court, Petition for Appeal and Order thereon, Assignment of Errors, Appeal Bond and Order Approving Bond, and Praecipe for Record, in the case of American Bank and Trust Company, Et Al., versus Federal Reserve Bank of Atlanta, Ga., Et Al., as fully as the same remains on file and of record in my office at Atlanta, Georgia, except that the Original Citation with the acknowledgment of service thereon is annexed hereto instead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of the said District Court at the City of Atlanta, Georgia, this 26th day of May, A. D. 1920.

OLIN C. FULLER,
(Seal) Clerk, U. S. District Court for the
Northern District of Georgia.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

U. S. Circuit Court of Appeals. Filed Sep. 16, 1920. Frank H. Mortimer, Clerk.

Motion to Certify Question of Jurisdiction.

Filed September 16, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3552.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

Motion to Certify Question of Jurisdiction to the Supreme Court.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

In order that the questions raised by the motion to remand the above-stated case to the State court (Transcript, page 75), involving the jurisdiction of the Federal courts over suits by and against Federal Reserve banks, may be finally adjudicated, and the policy of the laws of the United States with respect thereto definitely settled, appellants respectfully move the court to certify said questions affecting the jurisdiction in said case to the Supreme Court of the United States, as provided by law.

The scope and character of these questions is fully disclosed in the first section of appellants' brief and may be summarized thus:

First. Does the cause of action arise under the Constitution and laws of the United States?

Second. Does the fact of the incorporation of Federal Reserve banks by an act of Congress, ipso facto, confer jurisdiction upon the courts of the United States over cases by and against them?

Third. Is a Federal Reserve bank a national banking association within the operation of the act of July 24, 1882, ch. 290, sec. 4; the Judiciary act of 1887-8 (25 St. L., 433); and sec. 24 of the Judicial Code, restricting the jurisdiction of the United States courts in suits by and against national banks?

Fourth. Are the officials of a Federal Reserve bank entitled to remove to the Federal court actions against them growing out of their official acts, on the ground that they are agents of the National Government?

It is submitted that these questions involve considerations of national policy of a grave character and should be determined by the Supreme Court after full presentation and argument—a result which may not be practicable unless they are certified as prayed for.

Appellants respectfully represent that such direction of the case will tend to hasten its final determination, and obviate the necessity for argument of the same at large in this honorable court in case the Supreme Court should either require the whole record to be sent up for its consideration or should hold that the case was not within the primary jurisdiction of the Federal courts.

Respectfully submitted,

(Signed) ALEXANDER W. SMITH,
Solicitor for Appellants.

Due and legal service of the foregoing motion acknowledged, copy received and all other service waived, this 15th day of Sept., 1920.

(Signed) RANDOLPH & PARKER,
Solicitors for Appellees.

Response to Motion to Certify Question of Jurisdiction.

Filed October 9, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3552.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

In re Motion to Certify Question of Jurisdiction to the Supreme Court.

Response of Appellees.

Come now the appellees in the cause above styled, and in response to the motion, heretofore filed herein by the appellants, to certify the question of jurisdiction made in this case to the Supreme Court of the United States, show to this Honorable Court as follows:

First. The appeal which constitutes the subject matter at bar concerns two decrees of the Honorable District Court of the United States for the Northern District of Georgia, viz: (*a*) A decree of said Court, entered upon a motion by the appellants to remand the cause, retaining jurisdiction thereof, and adjudging the same to be properly within the jurisdiction of said District Court and, (*b*) a decree of said District Court, entered upon a motion by appellees to dismiss the original bill as amended for want of equity, dismissing said bill and

adjudging the same to be without equity and insufficient to constitute a cause of action.

Second. This cause was originally instituted in the Superior Court of Fulton County, Georgia, and, in that Court, upon presentation of the petition and without notice, the appellees, defendants below, were restrained, as will more fully appear from the said order granting said preliminary injunction. Upon the removal of said cause to the United States District Court for the Northern District of Georgia by the appellees, said restraining order remained of force pending the determination of the motion to dismiss said cause for want of equity. When the appeal now before this Honorable Court was granted, the judgment of the District Court of the United States for the Northern District of Georgia dismissing said bill was superseded, pending the disposition of the appeal now at bar. Appellees, therefore, represent that they are still subject to the restraining order granted without notice as aforesaid upon the filing of the bill, and that, for this reason, this cause should be heard and determined as speedily as possible.

Third. It is respectfully urged that a certification at this time by the Court of questions touching only the jurisdiction of the Court, with said appeal undetermined pending the decision of the Supreme Court on the jurisdictional question, would bring about a long delay, as appellees are advised, of eighteen months or longer, during which appellees would be restrained, as above set out, although having gained the case in the Court below upon all issues made in the record.

Fourth. Appellees respectfully contend that the issues made by said appeal should now be heard and disposed of in regular manner by this Court. It is represented that if the judgment of this Court on the appeal should be adverse to the appellants, there would then exist the right to petition to the Supreme Court for its writ of certiorari, or to take an appeal, as the case might be, and that in such event, the whole matter involved in this appeal could be brought at one time to the attention of the Supreme Court instead of having the jurisdiction of the United States Courts considered by the Supreme Court upon questions certified, as suggested by appellants in said motion, in advance of any consideration of the case upon its merits.

Fifth. Appellants allege in their said motion that this cause is of importance and a matter of public concern. While appellees do not agree that the case is one in which should be invoked of this Honorable Court the exercise of its discretion to certify at this time any of the questions made in the record for instruction in the premises by the Supreme Court, yet appellees do represent to the Court that the cause is one of importance and moment. They say, however, that the question of jurisdiction raises no questions which are more important than the other questions made in the case. Appellees, therefore, respectfully submit that the appeal at bar should not now be split so that the question of jurisdiction would be certified for determination by the Supreme Court, while those questions affecting the merits of the cause pend undisposed of in this Court. It is re-

spectfully requested, therefore, that should this Honorable Court, in the exercise of its discretion in the premises, decide to certify to the Supreme Court propositions of law so framed as to seek instruction upon any branch of the case touching the jurisdiction, it should at the same time frame for submission propositions of law touching the substantial merits of the controversy. To the discretion of this Court, appellees respectfully address the request that the questions certified, should any such be certified, should cover and embrace all phases of the case as made in the record.

But as above set out, appellees pray the Court to hear the cause and decide the same and not to certify it to the Supreme Court in whole or in part.

Sixth. With respect to the form of the suggested questions summarized in appellant's motion, appellees submit the following suggestions:

(*a*) The first question embraces the second and third.

(*b*) The second question, as framed in said motion, is incomplete, in that it fails to include as an essential jurisdictional element, the prerequisite of an amount involved exceeding $3,000.00, exclusive of interest and costs. Said question, as framed, must necessarily be answered in the negative, although an affirmative answer, so appellees contend, should be given were the question properly framed.

(*c*) The fourth question touches a proposition of law which is not involved in the record.

Wherefore, appellees respectfully submit this response, and addressing themselves to the discretion of the Court, ask that the Court consider the same in passing upon said motion.

Respectfully submitted,

HOLLINS N. RANDOLPH,
ROBERT S. PARKER,
Solicitors for Appellees.

Argument and Submission.

Extract from the Minutes of October 11th, 1920.

No. 3552.

AMERICAN BANK & TRUST COMPANY et als.

versus

FEDERAL RESERVE BANK OF ATLANTA, GEORGIA, et als.

On this day this cause was called, and, after argument by Alex W. Smith, Esq., for appellants, and Hollins N. Randolph, Esq., and Robert S. Parker, Esq., for appellees, was submitted to the Court.

Opinion of the Court.

Filed November 19, 1920.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3552.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

versus

FEDERAL RESERVE BANK OF ATLANTA, GA., et al., Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

Smith, Hammond & Smith, Stevens, McCorvey & McLeod, Tillman, Bradley & Morrow, Orville A. Park, and Watkins & Watkins, for Appellants.

Hollins N. Randolph and Robert S. Parker, for Appellees.

Before Walker and Bryan, Circuit Judges, and Grubb, District Judge.

GRUBB, *District Judge:*

This is an appeal from a decree in equity of the District Court of the United States for the Northern District of Georgia, dismissing the Bill or Petition for want of equity. The suit was originally brought in the Superior Court of Fulton County, Georgia, and was removed to the District Court of the United States for the Northern District of Georgia, by the Appellee, the Federal Reserve Bank of Atlanta. The Appellants were State banks of Georgia, not members of the Federal Reserve system. The relief prayed for in the petition filed in the State Court, was an injunction against the Appellees, restraining them from collecting checks drawn on Appellants "except in the usual and ordinary channel of collecting checks through correspondent banks or clearing houses," the purpose being to prevent collection through agents presenting the checks over the banks' counter. The Appellants moved to remand the cause to the State Court, which was denied, and the Bill was dismissed on the Appellees' motion to dismiss for want of equity. The appeal presents the questions of the correctness of the rulings of the District Court (1) in refusing to remand the case, and (2) in dismissing the Bill on the merits.

(1) The jurisdictional amount is conceded to be present. There was no diversity of citizenship claimed. Removal was granted because the cause was considered to be one arising under the Constitution and laws of the United States. This because (1) the defendant, the Federal Reserve Bank, was incorporated under an Act of Congress, and was neither a railroad incorporation, nor a national banking

association; and (2) because the Appellants' petition or bill, as amended, introduced a federal question into the record, in that it charged the acts of the defendants, sought to be enjoined, to be ultra vires of the powers of the Appellee, the Reserve Bank, granted by the Federal Reserve Act and its amendments. If the District Court had original jurisdiction of the cause of action for either or both of the reasons mentioned, the cause was properly removed. The Appellants contend that the Federal Reserve Bank is a national banking association, the presence of which as a party defendant would not introduce a question arising under the laws of the United States, and that there is no other such question presented by the Appellants' petition or bill.

We think the United States District Court had original jurisdiction of the cause of action for both of the reasons assigned. The case of Osborn vs. Bank of the United States, 9th Wheat. 738, supported by many subsequent decisions of the Supreme Court, settles the question of the jurisdiction of the Federal Court in cases in which one of the parties is a corporation, which owes its creation to an Act of Congress, unless another Act of Congress has withdrawn such jurisdiction. Nor is it important whether the Federal incorporation occupied the position of plaintiff or of defendant in the action. This is true unless a long line of Supreme Court decisions, in which jurisdiction was sustained upon this ground, without reference to the position of the corporation in the line-up of the parties, be disregarded. From this, follows the right of a federal incorporation, made a defendant in a cause in a State court, to remove the cause to the Federal Court, unless prohibited by an Act of Congress. Texas & Pacific Railway Co. vs. Cody, 166 U. S. 606-609; Washington & Idaho R. R. Co. vs. Cœur D'Alene Ry. Co., 160 U. S. 177-193. Congress has withdrawn jurisdiction only in cases of railroad companies and national banking associations. The contention of Appellants is that the Federal Reserve Bank of Atlanta is a national banking association within the meaning of the Act of July 12th, 1882, C. 290; the Judiciary Act of March 3rd, 1887, as corrected by the Act of August 13th, 1888, C. 886, Sec. 4; and by Section 24 of the Judicial Code of 1911. The prohibiting clause of the latter is: "and all national banking associations established under the laws of the United States shall for the purpose of all other actions against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located." If this language applies to the Federal Reserve Banks, it withdraws jurisdiction from the Federal Courts, in cases in which they are parties, and in which no other ground of jurisdiction appears in the record. We do not think it can be held to apply. At the time of the original limitation of jurisdiction in the Act of July 12th, 1882, and at the time of its renewals in the Judiciary Act of 1887, and in the Judicial Code of 1911, Federal Reserve Banks were unknown. The only national banking associations, then existent, were the national banks organized under the national banking laws. The question is whether Congress intended to include within this designation banks to be subsequently created of the nature of the Federal

Reserve Banks. The answer will depend upon the result of a comparison instituted between the national banks and the reserve banks, and is to be determined, not so much by points of identity (for all banks have many such) but by points of difference. The important differences between national banks and reserve banks, so far as the solution of this question is concerned are (1) the disparity in the number of each class and (2) that the reserve banks are banks of deposit and discount for other banks only and not for the general public. There are many other important differences but we think the two mentioned are determinative. The one class, small in number, acts as governmental fiscal agencies with no general clientele; the other class serves the public generally and locally, and are necessarily numerous. That all the provisions of the National Banking Act could be made applicable appropriately or safely to the class of reserve banks, is clearly impossible. Yet the same reasoning that would apply the limitation of jurisdiction imposed upon national banks to reserve banks would make it necessary to apply all other limitations against and grants in favor of national banks to reserve banks. If the reserve banks are national banking associations within the meaning of the Act of July 12th, 1882, and its successors, for one purpose, they are so for all purposes of the national banking laws. Such a conclusion would be a dangerous one, and lead to unforseeable consequences. We think it safer to conclude that Congress intended national banking associations to include only those that were then being created or those of a kindred nature that might thereafter be created; and that the differences between ordinary banks of deposit and discount with the public as customers and banks whose only permissible stockholders and customers are the Government and other banks, and which are more governmental agencies than private institutions; are not within the purview of national banking associations, as contemplated by Congress when it enacted the limitation upon the jurisdiction of national banking associations. In view of the paucity in number of the reserve banks, and their more intimate relation to the Government, and their more remote contact with the general public, Congress may well have found reason not to withdraw the jurisdiction of the Federal Courts from them by reason of their federal incorporation; though it had done so in the case of national banks. There is no express withholding of such jurisdiction. To imply it, would necessarily lead to other implications, so far reaching and difficult to anticipate, that we do not think it should be implied.

If the fact of federal incorporation of the Reserve Banks confers jurisdiction on the Federal Court, the fact that the officers of the Appellee bank are made individual co-defendants with it and that they are citizens of Georgia, does not prevent removal. Matter of Dunn, 212 U. S. 374.

(2) The amendment to the bill or petition of Appellants charged that the acts of the Appellees sought to be enjoined, if committed, would be committed in excess of the powers of the Federal Reserve Bank of Atlanta, and in violation of the provision of the Federal Reserve Act. Paragraph 9 of the Amendment charges that "the coercive measures, now threatened, are not only not authorized or

required by the terms of the Federal Reserve Act, which includes the charter of defendant reserve bank, but express provision is found therein for the performance of all clearing house functions, therein imposed in the regular way and through orderly banking channels, applicable to non-member banks, as well as member banks. Wherefore plaintiffs charge that the threatened coercive measures are ultra vires the charter of defendant Reserve Bank and the execution thereof by the individual defendants would be illegal and should be enjoined." The purpose of the petition or bill was not to enforce the collection of compensation for services availed of by the defendant reserve bank, at their reasonable value under the common law right. It was to compel the defendant bank to avail itself of such services, or, as an alternative, to abstain from handling the plaintiffs' check for collection. The bill prayed that the defendant bank be enjoined from presenting petitioners' or plaintiffs' checks for collection in any but the usual way through correspondence and remittance. Section 13 of the Federal Reserve Act provided that "no such charges (for remission) shall be made against the Federal Reserve Banks." Appellants' contention is that this prohibition prevents the Federal Reserve Banks from expending money in any way for the collection and remission of the proceeds of checks and drafts, drawn on non-member and non-depositing banks and that any attempt to collect such checks and drafts, by presenting them over the counter to drawee banks, which would not remit for them at par, was unauthorized and ultra vires of the powers of the Reserve Banks, under the Federal Reserve Act; and Appellants ask that the defendant bank be enjoined from handling such checks and drafts in the manner stated for that reason. Appellee, the Reserve Bank, asserts its right under the same provision of the Federal Reserve Act, to collect such checks and drafts by any method, provided it makes no payments to remitting banks for services in remitting. Plaintiffs' cause of action was the alleged wrong asserted by them to be caused by such collections. One ground upon which the wrong was urged, is that the Reserve Bank is forbidden by the Reserve Act to make collection of checks and drafts in this manner. This presents for decision the proper construction of the quoted provisions of the Federal Reserve Act, and it was presented in the plaintiffs' own statement of their cause of action in the amendment to the Bill and not as a suggested or anticipated defence which the defendants might be expected to set up as an answer to the plaintiffs' cause of action. The solution of this question depends upon the construction to be given Sections 13 and 16 of the Federal Reserve Act and not merely to a chartered power of the defendant bank. The plaintiffs having injected this federal question into their statement of their cause of action, the case was thereby made removable, as one arising under the laws of the United States.

We think the District Court of the United States properly entertained jurisdiction for both reasons.

Coming to the merits, the Appellants' cause of action is the prevention by injunction of the Federal Reserve Bank of Atlanta from

collecting checks drawn on Appellants' banks, in any other way than by correspondence and the remitting of the proceeds of the check by the bank on which it was drawn. The usage of the complaining banks had been to make a deduction from the amount of the check in remitting the proceeds to cover the so-called "exchange" or cost of remitting. This charge could only be applied in cases in which the check was forwarded through the mails to the drawee bank. If the check was presented over the counter of the drawee bank either by the payee or his agent, the full amount of the check was required to be paid, and the drawee bank was defeated in its endeavor to collect exchange on it. The purpose of the bill was to prevent the Federal Reserve Bank from handling checks on Appellants and on other non-member state banks except through the regular channel of correspondence or clearing. Section 13 of the Federal Reserve Act as amended, prohibited the Federal Reserve Bank from paying for the cost of remission. Consequently it was disabled from collecting through the regular channel from all banks which insisted on deducting for the cost of remission. In the case of all such banks it had the alternatives of not handling their checks at all or of presenting them for collection over the counters of the drawee banks by agents, express companies or the postal authorities. One contention of the Appellants is that the Federal Reserve Act prohibited the Reserve Banks from handling any checks, the collection of which entailed any expense to whomsoever payable; and that their endeavor to collect checks by presenting them at the counter of the drawee was ultra vires, because expense was necessarily incident to that method. Another contention of Appellants is that though the Federal Reserve Bank had the lawful right to handle such checks it was making or intending to make an oppressive use of its right, by so exercising it as to amount to coercion or duress and with a wrongful and malicious motive.

If the Federal Reserve Bank had availed itself of the services of the complaining banks in the remission of the proceeds of checks sent them for collection through the mails, in view of their known usage to deduct for exchange it would have been liable for the reasonable value of such services, except for the statutory inhibition against it. The purpose of the bill, however, is not to collect compensation for services rendered and to which the banks had a property right; but to compel the Federal Reserve Bank to avail itself of services, which it was unwilling to and disabled from accepting, by restraining it from using any other method which did not require the use of such services. Complaining banks had no property right that was infringed by the refusal of the Federal Reserve Bank to avail itself of their services in remitting or that a court of equity could be called upon to protect. It was under no legal duty to accept the services of the complaining banks, even had there been no statutory obstacle to its doing so. It also had the legal right to present the checks of the complaining banks to them for payment singly or in numbers over their counters and it was the absolute duty of the complaining banks to pay the full amount of such checks without deduction, when so presented. This is disputed by

Appellants only because of the statutory prohibition against the Federal Reserve Banks paying the cost of remission of the proceeds of checks collected by it. It is contended that this provision not only prohibited the Reserve Banks from paying exchange to remitting banks on which the checks were drawn; but also from paying expense of any kind or to any person for collecting checks; and that, as a consequence the Federal Reserve Banks were without power to handle any checks for collection, where such collection was attended with expense of any kind. If so, it would follow that the endeavor to collect checks over the counter through paid agents was within the prohibition of the Federal Reserve Act as amended and ultra vires. Whether Appellants' construction of the prohibiting clause is correct depends upon the purpose it was intended to subserve. Appellants' contention is that its purpose was to conserve the assets of the Reserve Bank. Appellees' contention is that it was to aid in accomplishing a uniform par clearance system. In view of the purpose of Congress to effect the latter object, we think the Appellees' construction is the correct one, and that the prohibition is limited to a charge against and payment of the charge to a remitting bank, and does not prevent the Federal Reserve Banks from expending money for collection of checks in any other way in an edeavor to accomplish a uniform system of par clearance. It follows that the acts of the Federal Reserve Bank complained of are within its legal powers. Conceding that they were ultra vires solely because entailing an unauthorized disposition of the banks' assets, the Appellants and Intervenors, who were neither stockholders nor creditors of the Reserve Bank, would have no standing to complain of such a disposition, because of a collateral injury to them. The right to make complaint on that ground would be confined to the United States or to individuals who were injured by the depletion of the banks' assets. If the purpose of the prohibition was altogether to save expense to the Federal Reserve Banks and if the Statute evinced no policy to prevent the Reserve Banks from handling checks of non-members and non-depositing banks, if it incurred no expense; the mere incidental injury that Appellants suffered from the handling of such checks, would give it no right to complain of an expenditure from which it could suffer no injury. The Federal Reserve Act does not only not evince a purpose to deny to the Reserve Bank the power to collect checks of non-members and non-depositing banks, but exhibits a general policy to encourage a uniform and universal system, of par clearance, which could only be accomplished by conferring power upon the Reserve Bank to handle checks drawn on all banks upon any terms that might be essential except the payment to the remitting bank of compensation for remitting.

The Appellants contend further that, even if the Federal Reserve Bank had the right to handle checks of non-member banks by presenting over the counter, it could not exercise that right oppressively; that is was threatening to do so, and should therefore have been enjoined. The prayer of the bill is not limited to an oppressive use of the method complained of but extends to any use of it whatsoever.

The bill seeks to enjoin the Appellee bank "from collecting or a
tempting to collect any check against petitioners or against any oth
bank in like condition, who may become a party hereto, except i
the usual and ordinary channel of collecting checks through cur
spondent banks or clearing houses, said channels being well esta
lished and well understood by defendants and all others familia
with the banking business." Appellants' complaint is of the metha
and not of an abuse of it. The effect of the writ prayed for woul
be to entirely prevent the Appellee bank from collecting checks
any other way than by transmission to the drawee bank, and th
remission of the proceeds by the drawee bank through the mails; a
so to prevent their collection by presentation over the counter ev
though presented regularly and without accumulation.

The right to the relief sought is also based upon the doctrine
conspiracy. An illegal conspiracy is not predicable upon the doi
of a lawful thing by lawful means, even when done in concert
combination. The bill fails to show a concert or combination th
would amount to a conspiracy in law, though its object or the mea
by which it was to be accomplished were unlawful. The acts co
plained of were those of the defendant, the Federal Reserve Ban
No legal conspiracy could exist between it and its officers the oth
defendants. The amended bill charges a conspiracy between t
Federal Reserve Bank of Atlanta and the Federal Banks of oth
districts, upon the theory that all the Federal Reserve Banks a
under control of the Federal Reserve Board. The Federal Reser
Banks of other Districts have no power to act upon the petitione
or the intervenors. Their jurisdiction in that respect is confined
their own districts. Being without power to injure the complaini
banks they could not be members of a conspiracy against such ban
The members of the Federal Reserve Board are not charged as co
spirators. That other Federal Reserve Banks had taken coercive st
against State Banks in their districts to enforce the par clearan
policy, as charged on hearsay information in the amended bill, h
no bearing on the cause of action relied upon by Appellants in th
case. Appellants can take nothing from the doctrine of conspira

The principle that one must so use his property as not to unnec
sarily and maliciously injure his neighbor, even though his act
otherwise lawful, is also invoked. Conceding that the accumulati
of checks, and their presentation, when accumulated, with the int
to embarrass and injure the drawee bank, might constitute an actio
able wrong and one that might be prevented by injunction; we
not think the amended bill presents any such case. There is
specific charge in the bill of any threat to present the checks in a
accumulated or oppressive manner, on which a court of equity wo
be justified in acting. Nor does the bill charge the Appellee ba
with acting from a merely malicious motive if that is material.
does aver that the purpose of the Appellee was to compel the App
lants to accept the lesser of two evils and to remit at par for che
drawn upon it. If this charge was borne out by the exhibits, wh
it is not, it would not constitute legal duress, on which a legal c
plaint could be predicated. The exhibits show that the adoption
a system of universal par clearance was advocated in good faith

the Appellee bank as a proper banking policy, and as well by Congress and the Federal Reserve Board. The adoption of appropriate means by the Appellee bank to accomplish this end cannot with any propriety be attributed to malice on its part against Appellants and other banks in like condition. Nor does the adoption of the method of presenting checks over the counters of the drawee bank imply an attempt to coerce them into becoming member or depositing banks. The Federal Reserve Bank was interested to supply a universal clearance at par for its member and depositing banks. It could accomplish this only by accepting from its member and depositing banks all checks tendered it by them upon whatever banks drawn. If drawn upon a non-member and non-depositing bank, which refused to remit at par, it was disabled under the Statute from handling such checks through the method of transmission of the checks and remittance of the proceeds through the mails. It could only collect such checks by presentation in person to the drawee bank. It is therefore reasonable to suppose that its declared purpose of making such presentations was in furtherance of its policy of furnishing complete clearing facilities to its member banks, and was not for the purpose of injuring or destroying the drawee banks, or of coercing them into becoming member or depositing banks with it. It constituted an essential step without which universal par clearance was not possible of accomplishment.

We conclude that the District Court had jurisdiction and that its decree dismissing the bill for want of equity was without error and it is therefore

Affirmed.

(Original filed November 19, 1920.)

Judgment.

Extract from the Minutes of November 19, 1920.

No. 3552.

AMERICAN BANK & TRUST COMPANY et als.

versus

FEDERAL RESERVE BANK OF ATLANTA, GEORGIA, et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Georgia, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, and the surety on the appeal bond herein, United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Petition for Appeal and Order Allowing Same.

Filed January 4th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 3552.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

Petition for Appeal.

In the Circuit Court of Appeals for the Fifth Circuit.

To the Supreme Court of the United States:

"American Bank & Trust Company et al.", by stipulation of record in said case dated May 3, 1920, and approved by order of the Trial Court under date of May 6, 1920, includes, by the expression "et al." all parties plaintiff and appellant in said case, both corporate and individual, as fully set forth in said stipulation, without the necessity of setting out the several names of said parties in extenso. In like manner, "Federal Reserve Bank of Atlanta et al." includes and refers to all parties defendant and appellees in said case. By reason of said stipulation it is not necessary to enlarge the record by repeating all of said names in this petition, there being several hundred banks parties plaintiff in said case.

Said appellants, thus named by reference and stipulation, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a judgment has therein been rendered, on the 19th day of November, A. D. 1920, affirming the decrees of the District Court of the United States for the Northern District of Georgia, and that the matter in controversy in said suit exceeds $1,000 besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on Appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause, with all things concerning the same to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said

appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

(Signed) ALEX W. SMITH,
(Signed) T. M. STEVENS,
(Signed) O. A. PARK,
(Signed) M. M. BALDWIN,
Solicitors for Appellants.

SMITH, HAMMOND & SMITH,
Atlanta, Georgia;
STEVENS, McCORVEY & McLEOD,
Mobile, Alabama;
TILLMAN, BRADLEY & MORROW,
Birmingham, Alabama;
ORVILLE A. PARK, Esq.,
Macon, Georgia,
Of Counsel.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3552.

AMERICAN BANK & TRUST COMPANY, Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

Order Allowing Appeal.

It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

(Signed) R. W. WALKER,
United States Circuit Judge, Fifth District.

Jan. 4, 1921.

Assignment of Errors.

Filed January 4th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3552.

AMERICAN BANK & TRUST COMPANY et al., Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

The appellants in the above entitled cause, in connection with their petition for appeal herein, present and file therewith their

assignment of errors, as to which matters and things they say that the decree entered herein on the 19th of November, 1920, is erroneous, to-wit:

(1) In holding and deciding that the United States District Court for the Northern District of Georgia had jurisdiction of said cause on removal from the Superior Court of Fulton County, Georgia, on the ground that said case arose under the constitution and laws of the United States.

(2) In holding and deciding that the United States District Court for the Northern District of Georgia had jurisdiction of said cause on removal from the Superior Court of Fulton County, Georgia, on the ground that the Federal Reserve Bank of Atlanta is not a National Banking Association within the meaning of the Acts of Congress denying jurisdiction of the Courts of the United States over National Banking Associations by reason of their creation under Acts of the Congress of the United States.

(3) In holding and deciding that the District Court of the United States for the Northern District of Georgia had jurisdiction of said case on removal from the Superior Court of Fulton County, Georgia, because the original bill in said case, as amended, charged the defendant, the Federal Reserve Bank of Atlanta, with exercising power ultra vires its charter, and thereby the decision of the case involved a construction of the charter of the Federal Reserve Bank as contained in the Federal Reserve Act.

(4) In holding and deciding that in considering the question of whether or not the District Court of the United States for the Northern District of Georgia had jurisdiction of said case because the Federal Reserve Bank of Atlanta is incorporated under an Act of Congress it is unimportant whether such corporation is plaintiff or defendant, and in not holding that, as to all corporations created by Acts of Congress, jurisdiction under the law as it now exists does not obtain merely because one of the defendants therein is a corporation created under a law of the United States, the cause of action set forth by the plaintiff arising under laws other than the laws of the United States.

(5) In holding and deciding that if the provisions of the National Banking Act as to jurisdiction are applied to Federal Reserve Banks all other provisions of the National Bank Act as to their functions and the conduct of their business would necessarily have to be applied to Federal Reserve Banks.

(6) In holding and deciding that if Federal Reserve Banks are held to be National Banking Associations for the purpose of determining the question of jurisdiction they must be held to be National Banking Associations as to all the details of their banking business, and in not holding and deciding that Federal Reserve Banks are National Banking Associations within the meaning of the law restricting the jurisdiction of Federal Courts over such Associations, notwithstanding the functions they perform

in the discharge of their banking business may vary in detail from the functions of ordinary National Banking Associations in some respects.

(7) In holding and deciding that the Acts of Congress restricting jurisdiction of the Federal Courts over National Banking Associations is limited to the National Banking Associations in existence at the time said laws were passed, or to subsequent banks thereafter created under Acts of Congress only in case such subsequently created National Banks were clothed with the identical detailed powers and functions exercised by National Banking Associations at the time said restrictive laws became effective.

(8) In holding and deciding that it would be necessary to imply Congressional restriction of jurisdiction of Federal Reserve Banks, and in not holding and deciding that jurisdiction of the Federal Courts in said case, because a Federal Reserve Bank was a party defendant thereto, was not expressly conferred in the Federal Reserve Act, and that the necessary effect of the law, as expressed, restricted jurisdiction of the Federal Courts where a Federal Reserve Bank is a party defendant, insofar as such jurisdiction is dependent solely on the fact that such Federal Reserve Bank was created under an Act of Congress.

(9) In holding and deciding that jurisdiction in said case attached because of the charge of ultra vires made by the plaintiffs, and that ultra vires acts admitted on the record can form the foundation of the plaintiffs' cause of action although a decision overruling the charge of ultra vires might destroy the right of action sought to be asserted, and in not holding that said charge of ultra vires could not effect the jurisdiction in said case because it was set up in an amendment filed subsequent to the removal thereof, and because a cause of action cannot arise under a Federal Law by reason of conduct not authorized by said law.

(10) In holding and deciding that the doctrine of the case of Osborn vs. Bank of United States reported in the 9th Wheaton page 738 supports jurisdiction of the case at bar merely because the Federal Reserve Bank, one of the defendants therein, was created under an Act of Congress, and in not holding and deciding that jurisdiction, if it exists at all in said case, must depend upon the nature of the case and not upon the character of the parties, and that the nature of the case is not such as to make it one arising under the Constitution and Laws of the United States.

(11) In holding and deciding that the allegations of the original bill in said case set forth no cause of action in equity authorizing the injunctive relief prayed for.

(12) In holding and deciding that it was the intention and purpose of Congress expressed in the Federal Reserve Act to establish universal par clearance in the United States.

(13) In holding and deciding that inhibition against the payment of any charges for remitting the proceeds of checks collected

through baking channels does not apply to charges incurred in the collection of said checks, and that while no payments can be made for charges for remittance of the proceeds of such checks by the banks upon which they are drawn, charges for collection and remission can be paid to private agents, or through other channels of collecting and remitting the proceeds of said checks.

(14) In holding and deciding that resort to the expedient of presenting checks for payment in cash over the counter to special agents employed by the Federal Reserve Bank is neither oppression nor unfair competition justifying an injunction against such conduct, on the ground that it does not amount to legal duress.

(15) In holding and deciding that conduct amounting to duress was necessary as a condition precedent to injunction against the conduct complained of in collecting and assembling checks and presenting them in numbers for payment in currency by banks on which they are drawn.

(16) In holding and deciding that the only relief prayed for in said bill was an injunction, having the legal effect of a mandatory injunction, requiring the Federal Reserve Bank to handle checks on the appellant banks through the mails in regular course, and entirely overlooking the prayers of the bill seeking to enjoin the Federal Reserve Bank from employing embarrassing, annoying, and expensive methods of collection of checks drawn on the appellant banks outside the usual and regular channels of banking business for the ulterior purpose of compelling appellant banks to forego their property rights in charging for their services in remitting funds in regular course of banking business.

(17) In holding and deciding that the allegations of the original bill, the truth of which is admitted by the motion to dismiss, did not constitute unfair competition justifying the injunctive process of a Court of Equity.

(18) In holding and deciding that the appellants have no cause of action justifying injunctive relief in a Court of Equity against the defendants in said case because appellants are not stockholders in the Federal Reserve Bank and have no interest to protect notwithstanding the injury they suffer from said Acts, and in not holding and deciding that the proposed method of collecting checks charged and admitted in the pleadings amounts to unfair competition and is not authorized by the charter of the defendant Reserve Bank, and that ultra vires acts of a corporation resulting in private injury may be restrained at the suit of the private parties injured thereby.

(19) In holding and deciding that, although the use of the service of the plaintiff banks in remitting proceeds of checks presented through the mails for payment and remittance creates a legal liability to pay the reasonable value of such services, the inhibition of the Federal Reserve Act against charging a Federal Reserve Bank for such service justified the employment of collection methods that

would present to the plaintiff banks the alternative of being deprived of the value of this service, lawfully rendered, without compensation in violation of its inherent rights, in order to avoid the greater loss and hardship involved in the embarrassing, annoying and expensive method of collecting said checks by presentation through paid agents for payment in currency over the counters of the plaintiff banks, and in not holding that the inhibition against payment of any collection charges by a Federal Reserve Bank resulted in its inability to handle said checks at all where lawful exchange charges could be made for the service of remitting their proceeds in regular course of banking business.

(20) In holding and deciding that because, under the interpretation the Court placed upon the Federal Reserve Act, the purpose of Congress was to establish a system of universal par clearance, any method of collection could be rightfully employed by Federal Reserve Banks to further this purpose regardless of its effect upon the business and private property rights of State Banks wholly without the jurisdiction of the Federal Reserve Act and of the Federal Reserve Banks created thereby.

(21) In holding and deciding that an illegal conspiracy is not predicable upon doing of a lawful thing by lawful means, even when done in combination, and in not holding and deciding that combinations and conspiracies to do lawful things through lawful means with the ulterior purpose of injuring the business and property rights of competitors constitutes a legal wrong and will be enjoined where common law remedies are insufficient to protect the rights of the parties injured thereby.

(22) In holding and deciding that no conspiracy is possible between the Federal Reserve Banks of the various districts created under the Federal Reserve Act because each operates only in its own district, and in not holding that carrying out the alleged purpose of creating universal par clearance necessarily involves the co-operation of all the Federal Reserve Banks in the United States, and in not holding and deciding that concert of action of all the Federal Reserve Banks in the United States under instructions from the Central Control of the Federal Reserve Board resulting in injury to the business and property rights of the plaintiffs not lawfully under their jurisdiction constitutes a combination or conspiracy that a Court of Equity would enjoin.

(23) In holding and deciding that because the Federal Reserve Banks are interested to establish universal par clearance for their member banks and depositing banks, and hence must accept all checks of all banks notwithstanding the inhibition against handling said checks through the mails if they carry exchange charges, they could adopt the expedient of presentation in person at any expense in furtherance of universal par clearance without intention to injure or destroy, and in not holding and deciding in accordance with the allegations of the bill that the threat of the defendant Reserve Bank

to adopt methods that would prove embarrassing, annoying and expensive, and therefore injurious to the business and property interests of the plaintiff banks, with the assurance that by yielding said property interests and property rights said injurious methods would be immediately abandoned, necessarily imported an intention to injure as a means of coercing compliance with the demands made upon the plaintiff banks to render the service of remitting proceeds of checks without charge.

(24) In holding and deciding that the embarrassing, annoying and expensive methods complained of might be rightfully employed to further the particular interests of the Federal Reserve Banks and their member banks and depositing banks notwithstanding the admitted injury to the plaintiff banks because the employment of such methods, although vastly more expensive than the customary methods, would ultimately further the particular interests of the Federal Reserve Banks without making them unfair competitors of the plaintiff banks and subject to be enjoined by reason thereof, and in not holding and deciding that the essence of all unfair competition in business is the purpose to ultimately further the particular interests of the parties by employing methods regardless of the immediate expense involved in the hope that the immediate expense will be compensated by the ultimate increase of business brought about either by the coercion, subjection, or destruction of the competitors against whom such unfair methods of competition are aimed.

Wherefore, the appellants pray that said decree may be reversed in all things.

(Signed) ALEX W. SMITH,
(Signed) T. M. STEVENS,
(Signed) O. A. PARK,
(Signed) M. M. BALDWIN,
Solicitors for Appellants.

Bond on Appeal.

Filed January 4th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3552.

AMERICAN BANK AND TRUST COMPANY et al., Appellants,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al., Appellees.

From the Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States.

Know all men by these presents:

That we, American Bank & Trust Co., et al., appellants, as principals, and the U. S. Fidelity & Guarantee Co., of Baltimore, Md.

as surety, are held and firmly bound unto the Federal Reserve Bank of Atlanta, et al., in the sum of Five Hundred and 00/100 Dollars, to be paid to the Federal Reserve Bank of Atlanta, et al.; we bind ourselves and each of our heirs, executors, administrators, and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of January, A. D. 1921.

Whereas, the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 19th day of November, A. D. 1920.

Now, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

AMERICAN BANK & TRUST COMPANY ET AL.,
Principals.

(Signed) By ALEX W. SMITH,
Their Solicitor of Record,

U. S. FIDELITY & GUARANTEE COMPANY,
Surety.

(Signed) By FRANK H. REYNOLDS,
Atty. in Fact. [SEAL.]

The foregoing bond is approved this 4th day of January, A. D. 1921.

(Signed) R. W. WALKER,
U. S. Circuit Judge, Fifth Circuit.

Stipulation as to the Amount Involved.

Filed January 4th, 1921.

In the Supreme Court of the United States.

AMERICAN BANK AND TRUST COMPANY et al.,

vs.

FEDERAL RESERVE BANK OF ATLANTA et al.

Appeal from the United States Circuit Court of Appeals, Fifth Circuit.

It is hereby stipulated and agreed by and between leading Counsel for appellants and appellees in the above stated case that the amount involved and in controversy therein exceeds the sum of One Thousand Dollars ($1,000) exclusive of interest and costs.

It is further agreed that this stipulation may be filed and become part of the record in said case.

This the 4th day of January, A. D. 1921.

(Signed) ALEX W. SMITH,
Solicitor for Appellants.

(Signed) HOLLINS N. RANDOLPH,
(Signed) R. S. PARKER,
Solicitor for Appellees.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 116 to 149 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3552, wherein the American Bank & Trust Company et al., are appellants, and the Federal Reserve Bank of Atlanta, Ga. et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 115 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 6th day of January, A. D. 1921.

[Seal of United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

UNITED STATES OF AMERICA,
Fifth Circuit:

United States Circuit Court of Appeals, Fifth Circuit.

To the Federal Reserve Bank of Atlanta et al.:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, thirty (30) days after the date of this citation pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit wherein the American Bank and Trust Company et al. (said suffix "et al." in-

cluding several hundred banks parties plaintiff and appellant in said cause which by stipulation are referred to by said suffix as fully as if their names were set out in full) are appellants and the Federal Reserve Bank of Atlanta et al. (said suffix "et al." including all of the other parties defendant and appellees in said cause which by stipulation are referred to by said suffix as fully as if their names were set out in full) are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. R. W. Walker, Judge of the United States Circuit Court of Appeals for the Fifth Circuit this 4th day of January, A. D. 1921.

R. W. WALKER,
Judge United States Circuit Court of Appeals for the Fifth Circuit.

Service acknowledged—copy received—this 4th day of January, A. D. 1921.

HOLLINS N. RANDOLPH,
R. S. PARKER,
Solicitors for Appellees.

[Endorsed:] U. S. Circuit Court of Appeals. Filed Jan. 4, 1921. Frank H. Mortimer, clerk.

Endorsed on cover: File No. 28,036. U. S. Circuit Court of Appeals, 5th Circuit. Term No. 679. American Bank and Trust Company et al., appellants, vs. Federal Reserve Bank of Atlanta et al. Filed January 11th, 1921. File No. 28,036.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 679.

AMERICAN BANK & TRUST COMPANY ET AL.,
APPELLANTS,

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.

MOTION TO ADVANCE.

HOLLINS N. RANDOLPH,
Attorney for Appellees.
WILLIAM L. FRIERSON,
Solicitor General.

(28,036)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 679.

AMERICAN BANK & TRUST COMPANY ET AL.,
APPELLANTS,

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MOTION TO ADVANCE.

Come now the appellees herein and move the court to advance this cause and set it for argument on April 11 next, or as soon thereafter as may be.

On behalf of the Federal Reserve Board, and because the powers of that board are called in question, the Solicitor General joins in this motion.

The appellants are seeking an injunction against the appellees, one of the Federal reserve banks and its officers, to

prevent that bank from complying with the orders and regulations prescribed by the Federal Reserve Board, the object of which is to establish a system under which bank checks may be collected throughout the United States at par. The appellants are banks organized under the laws of the States of Georgia, Alabama, and other States. These banks are not members of the Federal reserve bank system. Under the act of Congress, no Federal reserve bank is permitted to pay to any bank a charge for collecting a check and making remittance therefor. The appellant banks are claiming the right to refuse to pay checks drawn on them when presented for payment by Federal reserve banks, except through clearing arrangements by which they make a charge for remitting the proceeds. On the other hand, the Federal reserve banks, not being permitted by law to pay such charges, claim the right to present such checks to the drawee banks and demand payment in full over the counter, if necessary. The substance of the relief sought is to enjoin Federal reserve banks from thus collecting checks and thereby avoiding the payment of charges for remittance.

The question is one of very great public interest and should be promptly determined. One of the principal objects of the act of Congress under which the Federal reserve banks were organized is to secure the payment of checks throughout the United States at par. The right which appellant banks assert to refuse to pay such checks, however presented, at par would very seriously interfere with the carrying out of this plan, and their assertion of this right is embarrassing the Federal Reserve Board in putting into effect the purpose expressed by Congress.

Under the system which the board is establishing, the total

cost of clearances is borne by the Federal reserve banks. When this is fully put into effect it will save the general public a large amount of money which was formerly paid in exchange or charges for remittances. During the year 1919 the total volume of transactions through the machinery of the Federal reserve banks was approximately $74,000,000,000, and the total cost to the Federal reserve banks was about $250,000. The same transactions handled in the old way would have cost the public, in the way of exchange and charges, about $74,000,000. For these reasons, it is submitted that, in the interest of the general public and to prevent embarrassement in the operations of the Federal Reserve Board, the case should be advanced and determined at an early date.

Respectfully submitted,

HOLLINS N. RANDOLPH,
Attorney for Appellees.
WILLIAM L. FRIERSON,
Solicitor General.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 679.

AMERICAN BANK & TRUST COMPANY ET AL.

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.

To the appellants in the above-styled matter or their counsel:

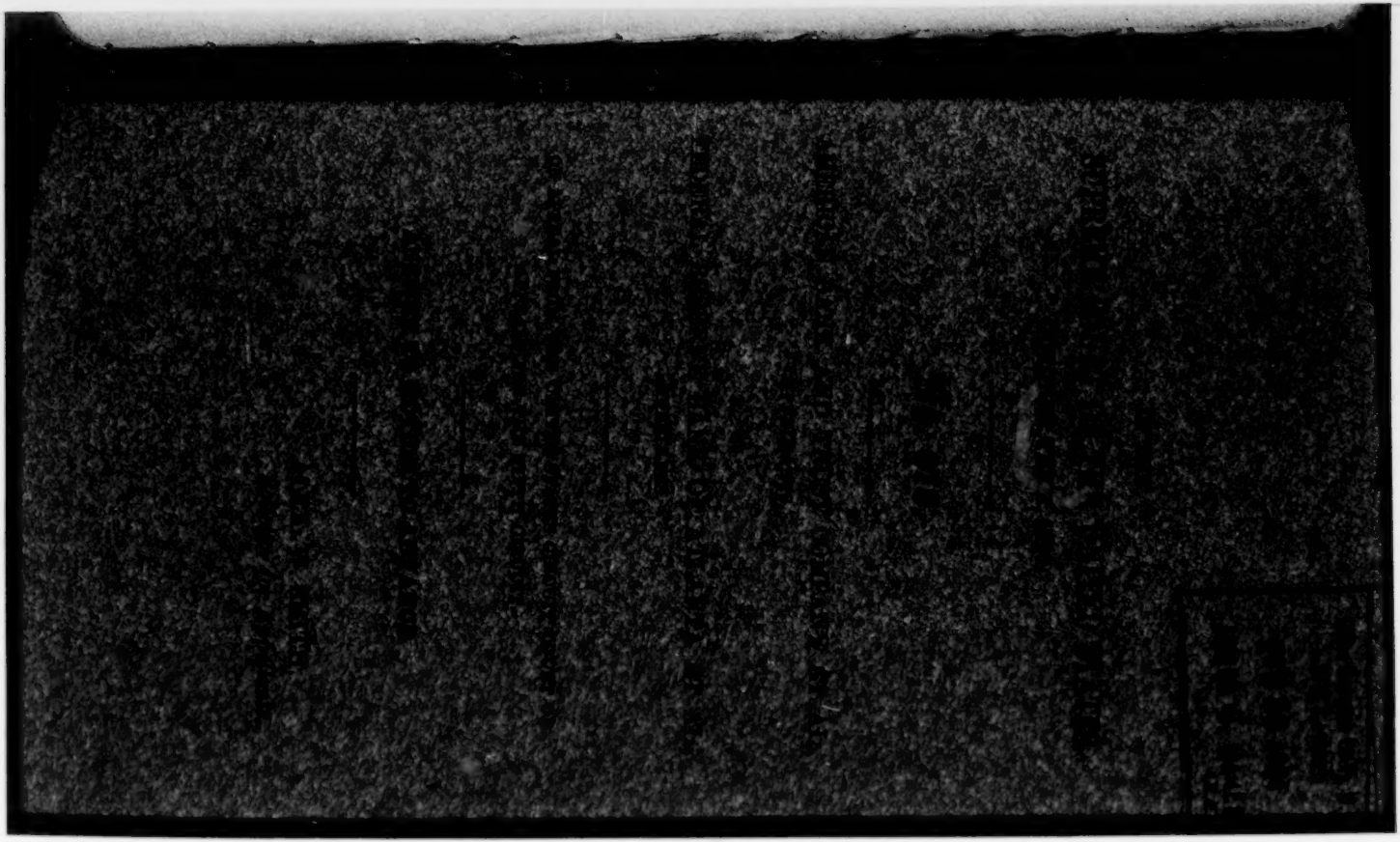
Please take notice that we will, pursuant to the law in such cases made and provided and to the rules of the honorable the Supreme Court of the United States, present to the court, in the above-styled matter, in Washington, D. C., on February 28, 1921, or as soon thereafter as counsel may be heard, a motion to advance the said cause upon the dockets of the Supreme Court, the Solicitor General of the United States joining in said motion.

HOLLINS N. RANDOLPH,
ROBT. S. PARKER,
Solicitors and of Counsel for Appellees.

Due and legal service of the above and foregoing notice is hereby acknowledged. All other and further service waived.

This 14th day of February, 1921.

ALEX. W. SMITH,
Solicitor and of Counsel for Appellants.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 679.

AMERICAN BANK AND TRUST COMPANY ET AL.,
APPELLANTS,

vs.

FEDERAL RESERVE BANK OF ATLANTA ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ANSWER TO MOTION TO ADVANCE.

Appellants in the above-stated case answer the motion to advance said case, returnable on the 28th day of February, 1921, as follows:

First. If the court is of opinion that said case falls within the provisions of the rules of the court entitling it to precedence, appellants do not object to such advancement, provided the date set for trial will permit of reasonable time for the preparation and printing of briefs. Appellants aver that to assign said case for April 11 would not afford sufficient time for this purpose. Jurisdiction of the court is challenged on grounds that make it necessary to review the subject of jurisdiction in some of its fundamental aspects, and the convenience of the court will require an extensive brief on the subject. Printed transcript of record was not received until the 9th instant. Appellants respectfully show that unless the time for argument can be put forward at least four weeks beyond April 11, to wit, May 9, they cannot reasonably expect to prepare their briefs in time to comply with the rules of the court. If that date is too late in the present term, appellants respectfully request that the assignment be fixed for an early date in the following term of court.

Second. Appellants join issue with the statements of fact, set forth in appellees' motion to advance, in the following particulars:

Appellants are not seeking to charge the Federal Reserve banks for the remittance of proceeds of checks drawn on them, but are insisting that under the law the Federal Reserve banks are not permitted to receive for collection checks drawn upon non-member banks because, under their respective charters, the latter are authorized to charge for the services rendered in remitting the proceeds of checks, which charge is expressly reserved to them under the provisions of section 13 of the Federal Reserve Act; and by the same section the Federal Reserve banks are prohibited from payment

of such charges, by reason of which prohibition, under the interpretation of said act by the Attorney General of the United States, the Federal Reserve banks are not permitted to clear or collect checks on banks rightfully entitled to payment of exchange.

(*a*) Appellants deny that one of the principal objects of the act of Congress, known as the Federal Reserve Act, is to secure the payment of checks throughout the United States at par. On the contrary, the Federal Reserve Act, in section 13, expressly provides "that nothing in this or any other section of this act shall be construed as prohibiting a member or non-member bank from making reasonable charges * * * for collection or payment of checks and drafts and remission therefor by exchange or otherwise." Any embarrassment the Federal Reserve Board may experience in connection with said matter is due solely and alone to an effort to prohibit charges for remission of proceeds of checks, the right to make which is expressly reserved to all banks, both member and non-member banks, in the United States by the terms of the Federal Reserve Act above quoted.

(*b*) Appellants note the allegation that the total cost of clearing checks is borne by the Federal Reserve banks. If such be the fact the expense is wholly unauthorized by that provision of section 13 of the Federal Reserve Act which prohibits any charge for collection and remission of checks to be made against Federal Reserve banks, which prohibition has been construed by the Attorney General of the United States to mean that the Federal Reserve banks cannot pay any such charges.

(*c*) Appellants deny that there is any public interest involved in this controversy with respect to relief from exchange charges alleged to aggregate seventy-four million dollars ($74,000,000) per annum, for the reason that such charges are paid by the business world involved in such exchange transactions as the cost of transporting funds from one point to another in the United States, which service involves a cost that no device can escape, and appellants aver that said cost is now paid, and always will be paid, by the business interests receiving the benefit of this service unless the present alleged conspiracy of the Federal Reserve banks to require the country banks of the United States to perform this valuable service without compensation is allowed to succeed.

Respectfully submitted,

ALEX. W. SMITH,
Solicitor for Appellants.